Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

INDYWAY INVESTMENT,
Petitioner,

vs.

DENNIS COOPER and
COUNTY OF LOS ANGELES,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEALS
SECOND APPELLATE DISTRICT, DIVISION THREE

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the application of a statute that makes a default tax sale of real property conclusively valid, when the County executed and recorded an original and only notice of power to sell tax-defaulted property that identified the state-assigned item numbers selected for the state-assigned auction sale and auction year that the tax-defaulted property was placed in but was subsequently used for a completely different auction sale and year; and when the County cancelled the only recorded notice of power to sell tax-defaulted property by way of Executive Delete, requiring a new notice of power to sell to be executed and recorded prior to tax sale, fails to provide due process of the law to real property owners, and so violates the Fifth and the Fourteenth Amendments.

2. Whether the application of a statute that makes a default tax sale of real property conclusively valid, when the County intentionally removed the tax-defaulted property from public auction only five days prior to scheduled auction, after the real property had been noticed for sale at public auction, and then the County returned the tax-defaulted real property back into the same public auction; and when the County executed and issued original Certificates of Redemption in Petitioner's name and failed to record a rescission of the notice required under *California's Revenue and Taxation Code* after the real property had been redeemed, fails to provide due process of the law to real property owners, and so violates the Fifth and the Fourteenth Amendments.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Indyway Investment, a business trust, brought this civil action against the party who purchased the tax-defaulted property out of public auction and against the party who sold the tax-defaulted property at public auction. Indyway Investment is not a corporation, does not have a parent company, and there is no publicly held company that owns more than ten percent (10%) of Indyway Investment.

Respondents, Dennis Cooper purchased the tax-defaulted property from the public auction and the County of Los Angeles that sold the tax-defaulted property in the public auction.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT ii

LIST OF APPENDICES iv

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE PETITION .. 9

LEGAL DISCUSSION 20

CONCLUSION 26

LIST OF APPENDICES

APPENDIX A

Opinion, Court of Appeal Second Appellate District Division Three, (Not for Publication) Filed 4/1/08 ..... A-1

Opinion, Court of Appeal Second Appellate Dist., Div. Three (Certified for Publication) Filed 4/24/07 ..... A-28

APPENDIX B

Judgement, Superior Court of State of California for the County of Los Angeles, Filed 5/8/06 ..... B-1

APPENDIX C

Statement of Decision, Superior Court of State of California for the County of Los Angeles, Filed 5/8/06 ..... C-1

APPENDIX D

Supreme Court of California, Petition for Review denied, Filed 6/25/08 ..... D-1

APPENDIX E

U.S. Const., Amends. V and XIV E-1

APPENDIX F

28 U.S.C.A. §1257 ..... F-1

APPENDIX G

California Revenue and Taxation Code (Relevant Sections) G-1

TABLE OF AUTHORITIES

Page

Cases

Chesney v. Gresham (1976)
64 Cal.App.3d 120, 134 Cal.Rptr. 238 ... 12

Craland, Inc. v. State of California (1989)
214 Cal.App.3d 1400, 263 Cal.Rptr. 255 .. 25

Litchfield v. Marin County (1948)
83 Cal.App.2d 730, 189 P.2d 750 11

McHugh v. Santa Cruz County (1973)
33 Cal.App.3d 533 ..... 16, 24

Paul v. Los Angeles County Flood Control Dist. (1974)
37 Cal.App.3d 265, 112 Cal.Rptr. 274 26

Philbrick v. Huff (1976)
60 Cal.App.3d 633, 131 Cal.Rptr. 733 25

Potter v. County of Los Angeles (1967)
251 Cal.App.2d 280 ..... 17, 22, 24

Quelimane Co. v. Stewart Title Guaranty Co. (1998) 19 Cal.4th 26,
77 Cal.Rptr.2d 709, 960 P.2d 513 25

Spencer v. Harmon Enterprises, Inc. (1965)
234 Cal.App.2d 614 ..... 16, 22, 24

Van Petten v. County of San Diego (1995)
38 Cal.App.4th 43, 44 Cal.Rptr.2d 816 ... 25

Page

Statutes

28 U.S.C. § 1257 2
28 U.S.C.A. § 1257(a) 1

California Revenue and Taxation Code
section 3365 11
section 3691 ..... 13, 14, 20-22
section 3691(a)(1)(A) 14
section 3691.1 ..... *passim*
section 3691.4 10
section 3701, et seq. 11, 20, 25
section 3711 ..... 10, 11, 19, 20, 25-27
section 3712 25
section 4112 ..... 6, 14, 15, 19, 20, 23, 24, 27
section 4112(c) 8, 10, 16, 22-24, 26
section 4105 ..... 14, 15, 19, 20, 27
section 4105.2 ..... 8, 10, 15, 20, 22, 24, 26

Constitution

United States Constitution
Fifth Amendment 2, 3
Fourteenth Amendment 2, 3

Other Authorities

5 Miller & Starr, Cal. Real Estate
(3d ed. 2005) section 11:148 25

OPINIONS BELOW

All the Respondents participated in the trial court action and the appeal taken to the Division One of the Second Appellate District of the State of California. On April 1, 2008, Division Three issued an unpublished opinion affirming the Los Angeles County trial court decision. A copy of that opinion is attached hereto as Appendix A.

Petitioner's appeal was based upon the Los Angeles County Superior Court judgment and statement of decision. A copy of the Los Angeles County Superior Court judgment filed May 8, 2006 is attached hereto as Appendix B. A copy of the Los Angeles County Superior Court statement of decision filed on May 8, 2006 is attached hereto as Appendix C.

On June 25, 2008, the Supreme Court of California, En Banc, denied Petitioner's request for a petition for review. A copy of that denial is attached hereto as Appendix D.

JURISDICTION

Division Three of the Second Appellate District of the California Court of Appeal entered its judgment on April 1, 2008. The Supreme Court of California denied the petition for review on June 25, 2008. This petition is filed within 90 days of the latter date. This Court's jurisdiction is invoked under *28 U.S.C.A. §1257(a).*

> "Final judgments...rendered by the highest court of a State...may be reviewed by the Supreme Court by writ of certiorari...where any...right [or] privilege...is specially set up or claimed under the...statutes of...the United States." *28 U.S.C. §1257.*

Where, as here, the state appellate court's judgment wrongfully deprives the petitioners, and all similarly situated real property owners in the State of California of their constitutionally protected rights by not resolving conflicts between a California statute that presumes a tax sale conclusively valid against federally protected rights of providing property owners due process of law before the taking of their property – the Court has jurisdiction to grant certiorari and hear and decide the case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant provisions of the Fifth Amendment to the United States Constitution states, "No person shall...be deprived of life, liberty, or property, without due process of law"; and relevant provisions of the Fourteenth Amendment to the United States Constitution provides, "Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

1. The Fifth and Fourteenth Amendments to the United States Constitution prohibit a state from depriving any person of life, liberty, or property, without due process of law.

2. This is an action for declaratory relief, quiet title, cancellation of tax deeds, and payment of excess proceeds initiated by Indyway Investment ("Petitioner") against the purchaser of the tax-defaulted real property at public auction, Dennis Cooper ("Respondent") following a public auction authorized and conducted by the County of Los Angeles ("Respondent").

3. In November of 1989, Rudy and Melissa Diaz, husband and wife, purchased two pieces of real property located at 2030 West 15th Street, Long Beach, California and the real property located at 2034 West 15th Street Long Beach, California, (collectively, "the Properties").

4. The Diaz's established the Indyway Investment Trust on May 8, 1992. The Diaz's transferred the Properties to Indyway, pursuant to a deed signed on May 8, 1992 and recorded May 11, 1992.

5. On August 15, 1997, the County executed and recorded the original and *only* notices of power to sell tax-defaulted property reflecting the state-assigned item numbers that identified the state-assigned auction sale and auction year that the Properties were placed in, which were selected

for the state-assigned 1998A Auction Sale, *only*, which was held on February 25, 1998.

6. The Properties were not placed in but were pulled out of the state-assigned 1998A Auction Sale of February 25, 1998.

7. On February 3, 2000, the County cancelled the original and *only* notices of power to sale tax-defaulted property by way of "**EXECUTIVE DELETE.**"

8. The Properties were again scheduled for tax sale in the 2000B Auction Sale of June 26, 2000, but were removed from that tax sale by the County due to "BAD NOTICE."

9. The Properties were then scheduled for the 2003B Auction Sale that was held on August 11, 2003.

10. A mailed notice of auction was mistakenly signed for by a guest of a tenant at 2725 Baltic Avenue for the 2034 property. Petitioner did not receive the notice of auction from the tenant until July 8, 2003, almost two weeks after the County mailed the notice.

11. After Petitioner complained to the County that the sale had not been properly noticed, and Petitioner threatened legal action to block the sale of the Properties at the August 11, 2003 tax auction, the Properties were yet again removed from the tax sale by the County on August 6, 2003.

12. After having sent a letter on August 1, 2003 demanding that the Properties be removed from the tax sale, Petitioner went to the County on August 6, 2003 to confirm that the Properties had been removed from the tax sale. On August 6, 2003, just five days before the tax sale, a County employee advised Petitioner's trustee that the Properties had been removed from the August 11, 2008 public auction.

13. Petitioner, through its trustee, was told that the Properties had been removed from the tax sale and were no longer listed as available for the August 11, 2003 public auction.

14. Unbeknownst to Petitioner, after August 6, 2003, the County placed the Properties back into the same tax sale. Petitioner was never notified that the Properties were "placed back into the tax sale."

15. The County failed to provide a *new* notice period for the Properties after the County returned the Properties to the same public auction in August of 2003.

16. Due to the false information provided by the County, that the Properties had been removed from the tax sale, Petitioner took no legal action to enjoin or prevent the August 11, 2003 public auction.

17. Despite the fact that the County had intentionally removed the Properties from the August 11, 2003 tax sale, the County purportedly

sold the Properties to Respondent Dennis Cooper on August 11, 2003.

18. On August 11, 2003, the County executed and issued *original* Certificates of Redemption in Petitioner's name.

19. On August 13, 2003, Petitioner, through its trustee, picked up *original* Certificates of Redemption dated August 11, 2003 issued in Petitioner's name for the Properties at the County Tax Collector's office.

20. However, despite the County issuing *original* Certificates of Redemption dated August 11, 2003 in Petitioner's name certifying that all delinquent prior taxes have been **redeemed**, the County has yet to execute and record a rescission of the notice as required under *California Revenue and Taxation Code section 4112(c).*

21. Petitioner filed its complaint against Respondents Dennis Cooper and the County of Los Angeles on March 18, 2004.

22. At trial and upon appeal, Petitioner contended that the County failed to follow the proper tax sale procedures and violated Petitioner's due process rights by intentionally removing the tax-defaulted real properties after the County had noticed the public auction. Additionally, the County had removed the Properties from public auction only five-days prior to the public auction and then returned the Properties to the same public auction, without proper notice to Petitioner

as required under *California's Revenue and Taxation Code.*

23. Petitioner challenged the County's actions of providing notice of the tax sale and the taking of real property without due process of law. Respondents claimed by inference that since Petitioner did not pay its property taxes and knew that it never paid its property taxes that Petitioner should not be allowed to challenge the public auction. Petitioner contends that such logic is misplaced and defies the underlying reasons for default tax sale procedures.

24. Also at trial and upon appeal, Petitioner attempted to prove that the County was required to record notices of power to sell tax-defaulted property *each time* the Properties were subject to tax sale, not just once. Petitioner claimed that the County was required to provide "notice" to the real property's owners of new power to sell the property each time the Properties became subject of a public auction. The original and *only* notices of power to sell tax-defaulted property for the Properties were selected for the state-assigned 1998A Auction Sale, *only*, which was held on February 25, 1998. The County did not execute and record *new* notices of power to sell tax-defaulted property for the 2003B Auction Sale of August 11, 2003 required under *California Revenue and Taxation Code section 3691.1.*

25. Petitioner also contended that the Properties were redeemed back to Petitioner by virtue of the County executing and issuing *original*

Certificates of Redemption dated August 11, 2003 in Petitioner's name for the Properties. Petitioner attempted to prove that since the County failed to satisfy the statutory prerequisite of *section 3691.1*, the 2003B Auction Sale of the Properties was invalid and Petitioner's right to redeem its real properties pursuant to *California Revenue and Taxation Code sections 4105.2* and *4112* was preserved as evident in the County's execution and issuance of *original* Certificates of Redemption dated August 11, 2003 in Petitioner's name for the Properties.

26. Additionally, Petitioner claims that the Properties were redeemed in favor of Petitioner and the Properties were returned to Petitioner as evidenced by the County's execution and issuance of *original* Certificates of Redemption dated August 11, 2003 in Petitioner's name for the Properties.

27. Here, Petitioner challenges the validity of the August 2003 tax sale conducted by the County for failing to provide statutorily-required notice to Petitioner which violated Petitioner's constitutionally protected right of due process before the taking of Petitioner's real property.

28. Petitioner contends that the County intentionally removed the Properties from a noticed public auction, thereby requiring the County to re-notice the public auction to provide Petitioner the statutorily required notice period under *California's Revenue and Taxation Code*. Petitioner contends that the removal acted as an intervening

act that terminated the previous notice period and required a new notice period of public auction to be completed. Here, that did not occur, when the County merely returned the Properties back into the same public auction that it had previously noticed.

29. Additionally, Petitioner contends that the Properties could not be sold by the County because the Properties had been redeemed back to Petitioner and also that the County was required to record *new* notices of power to sell tax-defaulted property *each time* the Properties were subject to tax sale.

REASONS FOR GRANTING THE PETITION

California real property owners are currently subject to having their property taken without due process of the law. The California *Revenue and Taxation Code* that regulates and controls the definition, determination, notice and ultimate sale of tax-defaulted real properties have areas of conflict that leave the California real property owners unprotected by statute.

This case represents an example of such a situation where a "catch all" code section providing for a conclusive presumption of validity of a tax sale fails to provide answers for all questions. There is a conflict among code sections under the *Revenue and Taxation Code*[1] that control the sale of

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[1] Unless otherwise indicated, all code section references in this petition for writ of certiorari are to *California's Revenue and Taxation Code*.

tax-defaulted real property by taxing authorities. The competing *Revenue and Taxation Code sections* are *section 3711* which provides that a tax deed is conclusive evidence of the regularity of the tax sale; *section 3691.1* which provides for an execution and a recordation of a notice of power to sell tax-defaulted property *whenever* a parcel becomes subject to the power of sale; *section 4105.2* which provides that when tax-defaulted property is redeemed and upon the request of the redemptioner, the tax collector shall issue a Certificate of Redemption; and *section 4112(c)* which provides that when the notice of power to sell real property recorded under Section 3691.4 is redeemed, the notice becomes null and void and the tax collector shall execute and record with the county recorder a rescission of notice.

Pursuant to *section 3711*, the issuance of a tax deed is conclusive evidence of the validity of the underlying tax sale, absent fraud or constitutional violations. The Court of Appeal agreed with the trial court that *section 3691.1* had been satisfied with a single recordation of notice of power to sell tax-defaulted property by the County in August of 1997.

Petitioner contends that this issue concerning *section 3691.1*, whether the notice of power to sell tax-defaulted property is required only once, is undetermined and unanswered by California statute or case law. Petitioner acknowledges the stated purpose of *section 3711* is for the protection of the process of tax sales against challenges against minor mistakes. The conclusive

evidence of *section 3711* can be challenged for jurisdictional due process violations or for fraud. However, Petitioner claims that jurisdictional or fraud challenges cannot be the exclusive remedy for dispossessed property owners. *Section 3711* cannot stand to conclusively presume the validity of tax sale when the County admits to taking intentional, negligent or mistaken actions that deprive the property owner of its property.

In the present situation, the original and *only* notices of power to sell tax-defaulted property were "**EXECUTIVE DELETED**" prior to the 2003B Auction Sale, which is an integral element of "notice" to the property owner. Any failure of notice to the property owner should invalidate the tax sale and the transfer of the real property. The statutory scheme behind the taking and selling of tax-defaulted property requires notice to the property owners, not only of the tax sale but the County's right and power to sell the tax-defaulted parcels. Even though the lower courts found that Petitioner had actual notice of the tax sale, if the notices of power to sell tax-defaulted property had been "EXECUTIVE DELETED", prior to the 2003B Auction Sale of August 11, 2003, Petitioner failed to have proper notice of the County's power to sell the parcels.

The legislature cannot make a tax deed conclusive evidence of jurisdictional matter prerequisite to state's right to execute a deed to a purchaser at tax sale. *Litchfield v. Marin County* (1948) 83 Cal.App.2d 730, 189 P.2d 750. *Sections 3711, 3365* and *3701*, which authorize sale of

property for delinquent taxes without actual notice to owner cannot cure jurisdictional defect, that is, one which is constitutionally indispensable step. *Chesney v. Gresham* (1976) 64 Cal.App.3d 120, 134 Cal.Rptr. 238.

This recorded notice of power to sell tax-defaulted property from the County pursuant to *section 3691.1* is a statutory prerequisite to its right to publish and place a tax-defaulted property in a state tax auction. Without the implementation of this statutory prerequisite (that gives the whole world constructive notice that a property is in a tax default status and is set to be sold at a future state tax auction), every other statutory procedure leading to a state tax auction has no validity because all the pertinent information needed to follow **constitutional due process requirements** are extracted from this recorded notice of power to sell tax-defaulted property such as, and not limited to, the state-assigned item numbers that identify the state-assigned auction sale and auction year that the tax-defaulted property are placed in of which the property owner may accurately and timely oppose or challenge.

In the present case, the County deemed the Properties in tax default status by executing and recording original and *only* notices of power to sell tax-defaulted property on August 15, 1997 reflecting the state-assigned item numbers selected for the state-assigned 1998A auction sale, only, which were scheduled for February 25, 1998. However, the Properties were not placed in but were pulled out of the state-assigned 1998A auction

sale. Petitioner challenged that the County failed to provide *another* notice of power to sell tax-defaulted property that the Properties had become subject to the power of sale, required under *section 3691.1*. However, the County proceeded to purportedly sell the Properties in the 2003B Auction Sale without subsequently providing *another* execution and a recordation of a *new* notice of the power to sell tax-defaulted property.

Here, the County's actions of failing to record *new* notices of power to sell tax-defaulted property prior to the 2003B Auction Sale of August 11, 2003 required under *section 3691.1*, prevented the tax sale of the real property by public auction.

Petitioner does not believe that it should lose its real property over the County's admitted failure to record *new* notices of power to sell tax-defaulted property even after they had been cancelled by the County by way of "Executive Delete." *Section 3691.1* provides that, "the tax collector shall execute a notice *whenever* a parcel becomes subject to the power of sale set forth in *Section 3691* on a form prescribed by the Controller. The county clerk shall take acknowledgment of the notice without charge." [emphasis added.] The original and *only* recorded notices of power to sell tax-defaulted property were invalid, as they had been recorded for the state-assigned 1998A Auction Sale of February 25, 1998, *only*, and were also cancelled by way of "Execute Delete" by the County on February 3, 2000. Therefore, Petitioner argues that a *new* "notice" pursuant to *section 3691.1* should have been executed and recorded before the Properties

could have been sold at a purported tax sale. Petitioner contends that *section 3691.1* is vague and ambiguous as to the term ***"whenever a parcel becomes subject to the power of sale."***

Respondents, the County, the trial court and the Court of Appeals apparently interpret the term "whenever" to mean as only once, after the 5-year tax default occurs. [*Code section 3691(a)(1)(A)*] Petitioner contends that section 3691.1 notice is not limited to only once, otherwise the *section 3691.1* would have not have stated that notice is required "***whenever*** a parcel becomes subject to the power of sale" but would have stated that notice is required "***only once after*** a parcel becomes subject to the power of sale."

There is a disparity and conflict in the interpretation of *sections 3691* and *3691.1* among these parties, it is a question that **potentially affects all California owners** of tax-defaulted properties and the receipt of notice of the power to sell their tax-defaulted properties.

Petitioner also challenged that the Properties had been redeemed back to Petitioner by virtue of the County executing and issuing *original* Certificates of Redemption dated August 11, 2003 in Petitioner's name for the Properties pursuant to *section 4105* and *section 4112*.

At trial and upon appeal, Petitioner presented evidence and argued that the Properties were redeemed back to Petitioner by virtue of the County executing and issuing *original* Certificates

of Redemption dated August 11, 2003 in Petitioner's name for the Properties and for payment of the defaulted taxes.

Here, however, despite Petitioner's evidence and argument that a Certificate of Redemption is a statement certifying that all delinquent prior taxes have been **redeemed** and that Petitioner maintained its ownership to the Properties; the Court of Appeals held that the Certificate of Redemption for the Properties were redeemed as of the auction date, so that Respondent Cooper would not be charged with additional taxes and penalties while his payments are being processed.

Section 4105 that governs the Certificate of Redemption, specifically *section 4105.2* that breaks down what should be stated on the Certificate of Redemption, in pertinent part, provides that, **"When tax-defaulted property is *redeemed* and upon the request of the redemptioner, the tax collector shall issue a certificate of redemption."** Nowhere in *section 4105* and its decimal sections supports the Court of Appeals contention that a Certificate of Redemption shall be issued to the purchaser of a tax-defaulted property so that the County would not charge the purchaser with additional taxes and penalties while his or her payments are being processed. Such interpretation of the Certificate of Redemption by the Court of Appeals is patently misplaced.

Section 4112, in pertinent part, provides that, "(c) When tax-defaulted property subject to the notice recorded under Section 3691.4 is

redeemed, the notice becomes null and void and the tax collector shall execute and record with the county recorder a rescission of the notice" [emphasis added.] And because the original and *only* recorded notices of power to sell tax-defaulted property were invalid, as they had been executed and recorded by the County for the state-assigned 1998A Auction Sale, *only*, and as they had been cancelled by way of "Executive Deleted" by the County on February 3, 2000, Petitioner's right of redemption was preserved.

The Court of Appeals also ignored Petitioner's offer of evidence and argument that when a tax-defaulted property is redeemed under *section 4112(c)*, the notice recorded under *section 3691.4* becomes null and void and the tax collector shall execute and record with the county recorder a rescission of the notice. Petitioner contends that upon redemption the deed becomes null and any interest acquired by virtue of sale to the state ceases, and title is restored to former owner or his successor in interest. *McHugh v. Santa Cruz County*, (1973) 33 Cal.App.3d 533.

Petitioner also contends that the redemption of the real properties preclude any transfer of ownership because a volunteer acquires no right whatsoever or no color of title by the payment of taxes on the land of another. *Spencer v. Harmon Enterprises, Inc.*, (1965) 234 Cal.App.2d 614. Furthermore, Petitioner contends that the redemption by payment of delinquent taxes did not affect a transfer of title to person who paid taxes where the redemptioner had no prior interest in the

property redeemed. *Potter v. County of Los Angeles,* (1967) 251 Cal.App.2d 280.

This "catch all" code section does not provide any direction to resolve the situation presented herein. The County, the taxing authority with the power to sell the Petitioner's real property, admitted to intentionally removing the Properties, after providing notice of tax sale to the property owners, and then returned the Properties to same tax sale without further or additional notice to the property owners. The County lacks any authority under the *Revenue and Taxation Code* or the California State Tax Collector's manual to remove properties from a scheduled public auction to place properties into a government sale.

The County has no stated or written policy or procedures that allow properties to be removed from public sale (after the property owner has been notified of the scheduled public auction) and then to be replaced back into the same public sale. Because there is no policy, there is of course no guidance as to when it is acceptable for the County to remove a property from public auction once it has been noticed for tax sale and then place a property back into the public auction without further notice to the property owner.

The Revenue and Taxation Code does not provide the authority to remove a property from public auction and then place it back into the same public auction without notice, and the California State Tax Collector's manual does not provide for it. Because there is no policy, the "occasional

practice" of removing property from public auction and placing them back into the same public auction is applied arbitrarily and without any logic or consistency. In fact, it is not clear when, if ever, other than in the present case a property was ever deliberately removed from public auction and then placed back into the very same public auction and sold. The normal circumstances when properties are removed from tax sale, they are placed on the list for the following tax sale and undergo a new notice period.

Here, the only example given by the County employee for the "occasional practice" was when a transposition occurred, and the wrong parcel was removed from sale in error. Even then, the County employee testified that the Tax Collector would not place the Property back in the same sale, unless it had been one day or less. The County employee indicated that if a property were out of the public auction for 5 days it could not be put back into the sale – even if no statutory deadline had been missed.

Another County employee, who purported to have established this practice without the approval of the County, testified that a property can be removed from sale and placed back into the same sale at any time as long as no statutory deadline had passed. The County employee's understanding of the "practice" would allow a property to be removed from sale at any time after the Notice of Auction had been sent (by statute up to 120 days before the sale), and placed back into the sale the day before it takes place.

The only thing clear about this "practice" of removing properties from a previously noticed tax sale is that it is without procedure, arbitrarily applied, inconsistent, not well understood by the County Tax Collector's own managers and employees, and should not be allowed. At worst this "practice" of removing properties from a previously noticed tax sale violates the law and results in a taking of property without statutorily mandated prior notice to the property owner.

Petitioner contends that the County's original removal of the Properties from public auction was an intervening act that effectively terminated prior notice of tax sale and required a new statutorily mandated notice period.

This Court should grant review to resolve the conflict of *section 3711* "conclusive evidence" provision; *section 3691.1* requirement of providing notice whenever the parcel(s) become subject to the power of sale; and *section 4105* and section *4112* redeeming provision. *Section 3711* requires evidence of fraud to overcome the conclusive presumption of validity of the tax sale proceedings, yet an admitted intentional act, negligence or mistake by the County employees under *section 3691.1* is not sufficient to overcome the presumption of validity of the tax sale. If this inherent conflict between *section 3711* and *section 3691.1* along with the cancellation of the recorded notices of power to sell tax-defaulted property by way of "Executive Delete" by the County is not resolved, all California owners of tax-defaulted properties are in jeopardy of having their real

property sold by tax sale without proper due process notice. *Section 4105* that governs the Certificate of Redemption and *section* 4112 that governs the redemption of a tax-defaulted property redeemed the Properties back to Petitioner, supersedes the tax sale because Petitioner's right of redemption was preserved after the County's failure to record *new* notices of power to sell tax-defaulted property prior to the August 11, 2003 tax sale.

LEGAL DISCUSSION

California statutory and case law is silent and undetermined on whether a conclusive presumption of the validity of a tax sale overcomes the requirements of proper recordation by the taxing authority of the notice of power to sell the tax-defaulted property. Petitioner hereby challenges the conflict between code *section 3711* and *section 3691.1* along with *sections 4105.2* and *4112* that have resulted in an inconsistent and harmful taking of real property. Here, the above-referenced code sections, as applied, has upheld and validated the County of Los Angeles' actions in the tax sale. The trial court and Court of Appeals found that Petitioner had received "actual notice" of the tax sale as required under Revenue and *Taxation Code section 3701*, et seq.

There is a discrepancy and ambiguity in *section 3691.1* that requires notice "whenever" the parcel becomes subject to sale. Although *section 3691* defines when parcel becomes subject to the power to sell, Petitioner contends that the notice

requirement arises for each parcel, after the 5-year tax default period and remains valid for until the parcel is either redeemed or the power to sell is otherwise removed. A different interpretation would not be consistent with the language of *section 3691.1.* Petitioner claims that if the legislature had intended for the power to sell to be noticed only once, *section 3691* would have so stated. *Section 3691.1* does not make such limitation, it states notice shall be provided "whenever" the property becomes subject to the power of sale.

In the present situation, the County failed to execute and record *new* notices of power to sell tax-defaulted property for the 2003B Auction Sale of August 11, 2003 even after they had been "Executive Deleted" by the County on February 3, 2000. This recorded notice of power to sell tax-defaulted property from the County pursuant to *section 3691.1* is a statutory prerequisite to its right to publish and place a tax-defaulted property in a state tax auction where pertinent and vital information are stated, such as, and not limited to, the state-assigned item numbers for the tax-defaulted property. These state-assigned item numbers are very important to meet **constitutional due process requirements** because they are equivalent to serial numbers in that they identify the state-assigned auction sale and auction year that the tax-defaulted property are placed in of which the property owner may accurately and timely oppose or challenge the sale of their tax-defaulted properties.

The validity of the 2003B Auction Sale of August 11, 2003 was affected by the County's failure to follow this statutory prerequisite to its right to publish and place a tax-defaulted property in a state tax auction pursuant to *section 3691.1.* This disparity and conflict in the interpretation of *sections 3691* and *3691.1* among these parties can **potentially affect all California real property owners of their constitutional due process rights** to accurately and timely oppose or challenge the sale of their tax-defaulted properties and the receipt of notice of the power to sell their tax-defaulted properties.

The lower courts ignored Petitioner's offer of evidence and argument that under *section 3691.1,* the County was required to execute a *new* notice of power to sell tax-defaulted property *whenever* the property becomes subject to the power to sell. The lower courts also ignored Petitioner's offer of evidence and argument that under *section 4105.2* that governs the Certificates of Redemption dated August 11, 2003 issued in Petitioner's name and under *section 4112(c)* that governs the redemption of a tax-defaulted property, the Properties were redeemed back to Petitioner because a volunteer acquires no right whatsoever or no color of title by the payment of taxes on the land of another. *Spencer v. Harmon Enterprises, Inc.*, (1965) 234 Cal.App.2d 614. Additionally, Petitioner contends that the redemption by payment of delinquent taxes did not affect a transfer of title to person who paid taxes where the redemptioner had no prior interest in the property redeemed. *Potter v. County of Los Angeles,* (1967) 251 Cal.App.2d 280.

The Respondents' contention is that "the recorded Notice of Power to Sell Tax-Defaulted Property stays in effect until the taxes are paid pursuant to *Revenue and Taxation Code section 4112*" and "if the property is sold at auction, the proceeds of the sale are applied to redeem the tax default." The Respondents' contention is patently unsound because separate statutes govern a state tax sale of a tax-defaulted property and its *opposition* which is the redemption of a tax-defaulted property. *Section 4112* deals solely with the **redemption** of a tax-defaulted property and states nothing in regards to the purchasing of a tax-defaulted property at a state tax auction. Under *Section 4112(c)*, the **redemption** of a tax-defaulted property merely terminates the state's power to sell a tax-defaulted property. The Respondents rely upon *section 4112* as support for its contention; however, the reading of this statute reveals no basis for such reliance.

Furthermore, Petitioner contends that its right to redeem its real properties was preserved because the original and *only* recorded notices of power to sell tax-defaulted property of August 15, 1997 was valid **only** for the 1998A Sale Auction and were cancelled on February 3, 2000 by the County by way of "Executive Delete" prior to the 2003B Auction Sale of August 11, 2003. This is evident by the County's execution and issuance of *original* Certificates of Redemption dated August 11, 2003 to Petitioner and in Petitioner's name *certifying that all delinquent prior tax years have been redeemed*. Petitioner contends that the Properties were redeemed back to Petitioner by

virtue of the *original* Certificates of Redemption issued in Petitioner's name, which were executed and issued by the County on August 11, 2003. Petitioner contends that under *Revenue and Taxation Code sections 4105.2 and 4112*, the Properties were redeemed back to Petitioner and the **redemption** of the real properties preclude any transfer of ownership because a volunteer acquires no right whatsoever or no color of title by the payment of taxes on the land of another *(Spencer v. Harmon Enterprises, Inc.,* (1965) 234 Cal.App.2d 614*)* Furthermore, Petitioner contends that the redemption by payment of delinquent taxes did not affect a transfer of title to person who paid taxes where he had no title before in the property redeemed. *Potter v. County of Los Angeles,* (1967) 251 Cal.App.2d 280.

Moreover, despite the County executing and issuing *original* Certificates of Redemption dated August 11, 2003 in Petitioner's name certifying that all delinquent prior taxes have been **redeemed**, the County has yet to execute and record with the county recorder a rescission of the notice because the notice becomes null and void when the Properties had been redeemed pursuant to *section 4112(c).* Petitioner contends that upon redemption the deed becomes null and any interest acquired by virtue of sale to the state ceases, and title is restored to former owner or his successor in interest. *McHugh v. Santa Cruz County,* (1973) 33 Cal.App.3d 533.

A tax sale proceeding is wholly a creature of statute. *Craland, Inc. v. State of California* (1989) 214 Cal.App.3d 1400, 1403, 263 Cal.Rptr. 255; *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 40, 77 Cal.Rptr.2d 709, 960 P.2d 513. It follows that there are no common law remedies for defects in tax sale proceedings. *Van Petten v. County of San Diego* (1995) 38 Cal.App.4th 43, 46, 51, 44 Cal.Rptr.2d 816; 5 Miller & Starr, Cal. Real Estate (3d ed. 2005) section 11:148, pp. 389-393. The *Revenue and Taxation Code* provides: "except as against actual fraud, the [tax] deed duly acknowledged or proved is conclusive evidence of the regularity of all proceedings from the assessment of the assessor to the execution of the deed, both inclusive." [*Revenue and Taxation Code section 3711*] In the absence of specified exceptions that do not apply here, a tax deed "conveys title to the purchaser free of all encumbrances of any kind existing before the sale." [*Revenue and Taxation Code section 3712*]

The presumption of regularity under *section 3711* is rebuttable as to the jurisdictional issue of compliance with due process. *Philbrick v. Huff* (1976) 60 Cal.App.3d 633, 648-649, 131 Cal.Rptr. 733; 5 Miller & Starr, Cal. Real Estate (3d ed. 2005) section 11:148, pp. 389-390. Here, Petitioner challenged the County's failure to comply with the procedures under *Revenue and Taxation Code sections 3701*, et seq.

Because a tax sale is imposed against an adverse party without consent, "every essential step leading to the execution of a tax deed must be

strictly followed." *Paul v. Los Angeles County Flood Control Dist.* (1974) 37 Cal.App.3d 265, 275, 112 Cal.Rptr. 274.

CONCLUSION

There are undetermined areas of law within California's tax-defaulted real property laws under the *Revenue and Taxation Code.* Petitioner contends that there is an ambiguity in *section 3691.1* as to whether the taxing authority is required to record the notice of power to sell tax-defaulted property only once or each time the real property is subject to sale. There is also the unanswered question of whether the County can sell the Properties without executing and recording a *new* notice of power to sell tax-defaulted property for each time the Properties are subject to tax sale. Additionally, *section 3711* cannot be used to conclusively validate a tax sale when the County admitted making errors in regards to the tax sale.

Furthermore, *section 4105.2* that governs the Certificates of Redemption dated August 11, 2003 issued to Petitioner and in Petitioner's name and *section 4112(c)* that governs the redemption of a tax-defaulted property supersedes the tax sale because Petitioner's right of redemption was preserved when the County failed to record *new* notices of power to sell tax-defaulted property prior to the 2003B Auction Sale of August 11, 2003 and when the original and *only* notices of power to sell tax-defaulted property were cancelled by the County on February 3, 2000 by way of "Executive Delete." And because there is no limitation as to

who may pay the taxes on the Properties, the County had accepted the payment of taxes from a volunteer in August 2003, who acquired no right whatsoever by the payment of taxes on the land of another.

This Court should grant review to resolve the conflicts of *section 3711* "conclusive evidence" provision and *section 3691.1* requirement of providing notice whenever the parcel(s) become subject to the power of sale along with *sections 4105 and 4112* redeeming provision. *Section 3711* requires evidence of fraud to overcome the conclusive presumption of validity of the tax sale proceedings, yet an admitted intentional act, negligence or mistake by the County employees under *sections 3691.1, 4105* and *4112* is not sufficient to overcome the presumption of validity of the tax sale. If this inherent conflict between *section 3711* and *section 3691.1* along with *sections 4105 and 4112* is not resolved, all California owners of tax-defaulted properties are in jeopardy of having their real property taken and sold by the taxing authorities, without proper due process of the law.

Respectfully submitted,

Dated: September 22, 2008

ARTIANO & ASSOCIATES, APC

By: JAMES ARTIANO
Counsel of Record
and
ERIC M. NAKASU

Attorneys for Petitioner
Indyway Investment

APPENDIX A

Indyway Inv. v. Cooper
Not Reported in Cal.Rptr.3d, 2008 WL 853429
Cal.App. 2 Dist., 2008.
Filed: April 01, 2008

Not Officially Published

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

INDYWAY INVESTMENT,

Plaintiff and Appellant,

v.

DENNIS COOPER and
COUNTY OF LOS ANGELES,

Defendants and Respondents.

No. B192944
(Los Angeles County Super. Ct. No. NC035452)
(As Modified April 9, 2008)

APPEAL from a judgment of the Superior Court of Los Angeles County, Judith Vander Lans, Judge. Affirmed.

Artiano & Associates, James Artiano, Eric Nakasu and Grace Lou for Plaintiff and Appellant.

Raymond G. Fortner, Jr., County Counsel and Joyce M. Aiello, Assistant County Counsel for Defendants and Respondents.

Law Offices of R.M. Anthony Cosio and R.M. Anthony Cosio for Defendant and Respondent, Dennis Cooper.

CROSKEY, J.

Plaintiff and appellant Indyway Investment is a trust that owned several properties in Long Beach. Indyway did not pay taxes on four of its properties. It initially lost two properties in a tax sale; that sale is not at issue in this appeal. The remaining two tax-defaulted properties were placed in a tax sale in 2003. Prior to the tax sale, the Los Angeles County tax collector sent notice to Indyway at: (1) the properties themselves; (2) the address for Indyway on file with the county assessor; and (3) an additional property owned by Indyway. The tax collector searched for other addresses for Indyway in various locations, including an internet "Superpages" search. While the tax collector did not send notice to a post office box claimed by Indyway as its official mailing address, Indyway did have actual notice of the 2003 tax sale. The tax sale proceeded, and Dennis Cooper purchased the properties at the auction. He received tax deeds for the properties. Indyway brought suit against Cooper and the County, seeking to cancel the tax deeds and quiet title to the property. Indyway took the position that the County had failed to comply with the statutory requirements for a proper tax sale of the property, particularly with respect to notice of

the auction. Indyway further argued that its constitutional due process rights were violated by the County's failure to give it notice of the auction at Indyway's claimed official address. The matter proceeded to a bench trial. The trial court found in favor of the defendants, entering a judgment quieting title in favor of Cooper.[1] Indyway appeals. On appeal, we conclude that many of Indyway's challenges to the County's perceived lack of compliance with statutory prerequisites are simply not cognizable, due to the conclusive effect that must be given to the tax deeds. With respect to Indyway's contention that it was deprived of property without due process, we conclude that the trial court's finding that Indyway had actual notice is supported by substantial evidence, defeating Indyway's assertion. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Overview of Tax Sale Law

Before we discuss the specific claims made by Indyway, a brief overview of the tax sale process is helpful. Each year, before June 8, the tax collector is required to publish notice of impending default for failure to pay taxes on property for which it does not appear that the property taxes will have been paid by June 30. (Rev. & Tax.Code, § 3351.) At 12:01 a.m. on July 1, taxes on real property which have not been

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[1] Indyway, however, was to receive the excess proceeds from the tax sale.

paid "shall by operation of law be declared in default." (Rev. & Tax.Code, § 3436.) Notice of default is to be published (Rev. & Tax.Code, § 3371) and may be sent to the assessee (Rev. & Tax.Code, § 3384).

Five years after the property is defaulted, the tax collector has the power to sell it. (Rev. & Tax.Code, § 3691, subd. (a)(1)(A).) This triggers further notice requirements, both by publication (Rev. & Tax.Code, §§ 3361, 3362) and to the assessee (Rev. & Tax.Code, § 3365). Additionally, the tax collector shall "execute a notice" on a form prescribed by the Controller, "whenever a parcel becomes subject to the power of sale" under Revenue and Taxation Code section 3691. (Rev. & Tax.Code, § 3691.1) The notice is recorded with the county recorder, and then forwarded to the tax collector (Rev. & Tax.Code, § 3691.4), who shall file that notice in his or her office "and keep a record to show the subsequent disposition of the property."[2] (Rev. & Tax.Code, § 3691.5.)

Once the property is subject to the power of sale, the tax collector is required to attempt to sell the property, unless it has been redeemed or is otherwise

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[2] Originally, the provisions regarding this notice provided for notice to be given to the Controller, with the form to be forwarded from the recorder to the Controller, who would keep it in his or her records. (Rev. & Tax.Code, fmr. §§ 3691.1, 3691.4, 3691 .5.) The provisions were amended in 1998 to eliminate the Controller as the recipient of the notice.

not subject to sale. (Rev. & Tax.Code, § 3691, subd. (a)(1)(A).) The tax collector shall first attempt to sell the property within four years of when it becomes subject to sale. (Rev. & Tax.Code, § 3692, subd. (a).) The property is to be sold at public auction to the highest bidder. (Rev. & Tax.Code, § 3693.)

Between 45 and 120 days prior to the sale, the tax collector is required to send notice of the sale by certified mail, return receipt requested, to "the last known mailing address, if available, of parties of interest." (Rev. & Tax.Code, § 3701.) "Parties of interest" include lienholders and holders of record title. (Rev. & Tax.Code, § 4675.) "The tax collector shall make a reasonable effort to obtain the name and last known mailing address of parties of interest. [¶] The validity of any sale under this chapter shall not be affected if the tax collector's reasonable effort fails to disclose the name and last known mailing address of parties of interest or if a party of interest does not receive the mailed notice."[3] (Rev. & Tax.Code, § 3701.) Notice of the intended sale must also be published in newspapers. (Rev. & Tax.Code, § 3702.)

Certain governmental entities can obtain the property, but only if they seek to do so before the date of the first publication of the notice of intended sale

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[3] If the property is the primary residence of the assessee, the tax collector shall also make a reasonable effort to personally contact the assessee, but failure to do so will not invalidate the subsequent sale. (Rev. & Tax.Code, § 3704.7)

in the newspaper. If a governmental entity seeks to use the property for public use, that entity can file with the tax collector and county board of supervisors an objection to the sale and an application to purchase the property. If those documents are filed before the first publication of the notice of intended sale, the tax collector may not proceed with the public auction sale of the property. (Rev. & Tax.Code, §§ 3695.4.) The entity's application triggers a process governed by Chapter 8 of Part 6 of Division 1 of the Revenue and Taxation Code-the chapter entitled "Deed to State, County or Public Agencies." (The parties refer to this as a "Chapter 8" sale, as opposed to an auction sale pursuant to Chapter 7 of the same Part.) Under a "Chapter 8" sale, the property is sold to the governmental entity for an agreed-upon price. (Rev. & Tax.Code, § 3775.)

Additionally, the tax collector may remove a parcel from the tax sale upon the recommendation of the county counsel, when it is deemed to be in the best interest of the county. (Rev. & Tax.Code, § 3698.8.) "The tax collector shall notify the controller, in writing, whenever a parcel is removed from a tax sale." (*Ibid.*)

If the property is not removed from the sale, and is not redeemed before close of business on the business day preceding the sale, the property is sold at auction to the highest bidder. (Rev. & Tax.Code, § 3706.) Indeed, the right of redemption terminates at the close of business on the last business day before the sale; it is revived only if the property is not sold. (Rev. & Tax.Code, § 3707.)

When the property is sold at auction, and the tax collector has been paid in full, the tax collector shall issue a deed to the purchaser, and record the deed. (Rev. & Tax.Code, §§ 3708, 3708.1.) "Except as against actual fraud, the deed duly acknowledged or proved is conclusive evidence of the regularity of all proceedings from the assessment of the assessor to the execution of the deed, both inclusive." (Rev. & Tax.Code, § 3711.)

2. The Facts of Indyway's Loss of Its Property

Indyway is a trust established in 1992; the trustors were Rudy and Melissa Diaz; the initial trustee was Deron Brunson.[4] In 1996, a second trustee, Kedar Cohen, would be appointed to serve along with Brunson. According to the trust document, all properties owned by Indyway must be purchased only in silver dollars of a specific level of purity. The trust document indicates that, by purchasing property in this manner, it "creates a special status whereby [the property] is exempt from normal taxation such as property taxes." (Emphasis omitted.) Shortly after execution of the trust, the Diazes deeded five properties to Indyway, in exchange for 21

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[4] A version of the trust document was introduced into evidence at trial. Brunson and Melissa Diaz both testified that their signatures were on the exhibit. While both witnesses, when confronted with certain language in the trust, denied that the exhibit was the actual trust document, their authentication of their signatures constituted sufficient evidence that the exhibit was, in fact, the trust document.

silver dollars. The properties consisted of four neighboring properties on 15th Street in Long Beach, and a fifth property at 2725 Baltic Avenue. We refer to the latter property as the "Baltic" property. The 15th Street properties are referred to by the last two digits of their assessor's parcel numbers: 13, 14, 15, and 16. The Deed indicates that Indyway's address is a post office box in North Hollywood ("the North Hollywood box"). It is the eventual tax sale of properties 15 and 16 that is at issue in this appeal.

The Baltic property is residential; Indyway paid property taxes on it. The four 15th Street properties are commercial; Indyway paid no taxes on those properties. After Indyway had been in default for five years, the properties became subject to the power of sale. There is no dispute that the County made all necessary publications and complied with all notice requirements to this point.[5] On August 15, 1997, the tax collector recorded notices of power to sell the tax-defaulted property. (Rev. & Tax.Code, § 3691.1)

Parcels 13, 14, 15 and 16 were initially scheduled for sale in 1998. After the auction had been noticed,

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[5] Indyway argues that the County violated Revenue and Taxation Code section 2610.5, which requires the tax collector to annually provide the taxpayer with a tax bill. Yet that statute also provides, "Failure to receive a tax bill shall not relieve the lien of taxes, nor shall it prevent the imposition of penalties imposed by this Code." Indyway makes no argument as to how, given this language, the failure to receive a tax bill somehow invalidates a subsequent tax sale.

Melissa Diaz obtained a commitment for a loan, the proceeds of which would be used to pay the back taxes on the properties. As such, the properties were removed from the scheduled tax sale. However, the tax payments did not materialize. The four properties were then scheduled for sale in 2000.

On October 13, 1999, the tax collector's office wrote to Melissa Diaz, in apparent response to her inquiry regarding the tax status of all four parcels. She was informed of the amount of taxes outstanding with respect to each property. The letter was addressed to Diaz at the Baltic property. It states, in part, "We understand that ... you have asked that all notices be sent to the above address." The letter enclosed "Change of Mailing Address cards" for each of the four parcels, directing Diaz to mail them, when completed, to the assessor's office. Indyway would eventually offer evidence suggesting that it properly completed the change of address cards and mailed them to the assessor's office, indicating a new address for Indyway of a post office box in Long Beach ("the Long Beach box"). However, the trial court rejected this evidence, specifically concluding that Indyway "did not change its official mailing address with the County Assessor from [the North Hollywood box] to [the Long Beach box]."

The County concluded that it had given inadequate notice of auction with respect to parcels 15 and 16 for the 2000 sale, and withdrew them from the auction. The sale proceeded, however, with respect to parcels 13 and 14, which were sold at auction. Indyway challenged the sale, sending

numerous letters to the County tax collector seeking various documents and explanations. These letters were sent on Indyway letterhead which identified the Long Beach box as Indyway's address. The County responded by letters addressed to Indyway at the Long Beach box.

As the dispute regarding parcels 13 and 14 proceeded, the County scheduled parcels 15 and 16 for sale in an auction to be held on August 11, 2003. It therefore was necessary for the tax collector to "make a reasonable effort to obtain the name and last known mailing address of parties of interest," to be sent notices of auction. The tax collector began its effort to compile a mailing list for notices of auction in April 2003. The effort consisted of two parts. First, the tax collector purchased a "Parties of Interest Report" from an independent vendor, who searched the property records and prepared a title report for each property. Second, the tax collector assigned a staff member, Son Leao, to conduct independent research to supplement the reports. While, conceivably, the tax collector could have used its mailing list for the 15 and 16 properties from one of the prior auctions as its starting point, the tax collector's policy was to start fresh with new title reports.

The reports from the independent vendor indicated that there were no deeds of trust on the properties, and no judgments or lien documents

against Indyway.[6] The reports included copies of the original deed of the properties to Indyway, which indicated the North Hollywood box as Indyway's mailing address. Leao supplemented the report by conducting an internet "Superpages" phone book search for "Indyway Investments." The search revealed no matches. Leao also searched the County tax roll to determine whether Indyway owned any other properties in the County which might provide a mailing address. This search revealed the Baltic property. None of the searches uncovered the Long Beach box as an address for Indyway. The tax collector's mailing list for properties 15 and 16 ultimately included: (1) the addresses of the two properties themselves; (2) the North Hollywood box; and (3) the Baltic property.[7] However, as the result of an apparent typographical error, the address for the Baltic property on the mailing list for property 16 was incorrectly recorded. The notices of auction were sent on June 26, 2003. When notices of auction were sent, the Baltic property was sent notice only for property 15.

A tenant was living at the Baltic property, although there was substantial evidence that Indyway also possessed an office at that location. Cohen received the notice of auction for property 15

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[6] The reports did, however, confirm the 1997 recordation of the notices of power to sell tax-defaulted property.

[7] Notice was also sent to parcel 13, which Indyway no longer owned, and the mortgage broker who had indicated an intent to make a loan on the properties in 1998.

that had been sent to the Baltic property. He indicated that the tenant at the property gave it to him on July 8, 2003, more than one month before the date of the auction.

That day, Cohen wrote the tax collector on behalf of Indyway. Cohen acknowledged receipt of the notice of auction with respect to the 15 property. He argued that the notice of auction had been sent in error, on the theory that the tax collector had been required to record a second notice of power to sell tax-defaulted property. In other words, Cohen took the position that the notice of power to sell which had been recorded in 1997 and was still a matter of record, was not sufficient with respect to the upcoming 2003 sale of the property. Cohen indicated that if the tax collector proceeded with the sale in the absence of a second notice of power to sell, Indyway would bring suit. Cohen added, "This also includes [the 16 property]."

County Counsel apparently responded to the letter on July 22, 2003. This prompted another letter from Cohen to the tax collector, dated August 1, 2003. This letter reasserted Indyway's position with respect to the necessity of a second recorded notice of power to sell. Additionally, Cohen noted that the Long Beach box is "the only official mailing address that [Indyway] shall recognize for all correspondences." He confirmed that "[a]ny and all correspondences mailed to any other addresses are invalid and I SHALL NOT recognize them." As such, Cohen argued that the notice of auction he had received with respect to the 15 property was " not valid," because it had been sent

to the Baltic property. He further added, "And you have NOT sent any Official Notice of Auction for [the 16 property]."

Sharon Perkins was the operations chief of the secured property tax division of the County tax collector. She gave final approval for the 15 and 16 properties to proceed to auction, despite Indyway's protestations. Perkins based her approval on the facts that the tax collector had made reasonable efforts to send notice as required, and that Indyway had actual notice of the sale of both properties.

On August 6, 2003, a governmental entity expressed interest in purchasing the 15 and 16 properties under a Chapter 8 sale. In response, the properties were temporarily removed from the list of properties available for auction. However, the tax collector quickly determined that this decision was erroneous, in that properties that have been improved are not eligible for Chapter 8 sale.[8] The properties were immediately returned to the list of properties available for auction. During the time in which the properties had been removed, which was less than one day, the tax collector did not send notice to the Controller, which is required when a property is removed from auction.

The auction was scheduled for Monday, August 11, 2003. By statute, Indyway had until the close of business on Friday, August 8, 2003 to redeem the

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[8] It also appears that the governmental entity's request was untimely.

property. No payments were made for the delinquent property taxes, and the parcels were therefore sold at auction. Bidding was competitive. Cooper won the auction for the 15 property with a bid of $134,000, and the 16 property with a bid of $69,000.

Cooper had 30 days within which to make full payment, and ultimately did so, on August 20 and September 2, 2003. On October 6, 2003, tax deeds transferring the properties to Cooper were recorded. It was not until November 6, 2003, however, that the tax collector properly allocated Cooper's payments to the delinquent taxes on the parcels, so that the properties would be considered redeemed. Nonetheless, when certificates of redemption were ultimately issued, they indicated that the properties were redeemed as of the auction date, so that Cooper would not be charged with additional taxes and penalties while his payments were being processed.

On March 18, 2004, Indyway filed its complaint in the instant action against Cooper and the County, seeking to quiet title to properties 15 and 16, and cancel the tax deeds.[9] Cooper filed a cross-complaint, also seeking to quiet title. The case proceeded to a bench trial.

At the trial, Indyway's witnesses testified to a different, and highly improbable, view of the facts, in

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[9] Indyway subsequently added a cause of action for payment of the excess proceeds from the tax sale. Indyway was successful on this cause of action at trial, and it is not at issue in this appeal.

three significant areas: First, Indyway took the position that it had executed change of address cards for properties 13 through 16, identifying the Long Beach box, and had mailed them to the assessor on October 16, 1999. Indyway relied on an exhibit, consisting of copies of the purported cards, and a signed proof of service. Indyway also relied on the testimony of Raymond Amavisca, the man who purportedly had executed the proof of service. Amavisca testified that he was a friend of Melissa Diaz, and that she asked him to do this favor for her. He testified that she gave him the four filled-out cards and a proof of service. According to Amavisca, he signed the proof of service, put all five items in an envelope (on which Diaz had affixed postage) and immediately mailed them at the post office. In cross-examination, he agreed that he had signed only one copy of the proof of service-the copy which he placed in the envelope and mailed. Indyway offered no explanation of how its trial exhibit could contain a signed proof of service if the single executed copy had been immediately mailed to the County assessor with no copies made. Furthermore, the County introduced evidence from an employee of the assessor's office indicating that, if Indyway's purported change of address cards had been received, the office would have requested a letter on Indyway's letterhead authorizing the change, and would not have processed it without such authorization. The trial court clearly disbelieved Indyway's evidence on the issue of the change of address cards, finding, in its statement of decision, that Indyway "did not change its official mailing address."

Second, Indyway offered the testimony of Cohen to the effect that he went to the tax collector's office on August 6, 2003, to inquire on the status of the planned sale of parcels 15 and 16. As, by coincidence, Cohen inquired during the precise time that the properties had been temporarily removed from the auction for a Chapter 8 sale, Cohen testified that he had been informed by a "man" at the office that parcels 15 and 16 had been pulled from the auction. Indyway took the position that Cohen relied on this information and believed that the properties would not be auctioned, and therefore pursued no further efforts to stop the auction. In contrast, the County introduced evidence that, if someone had come to the counter with a problem with respect to a particular parcel, the tax assessor would have documented the encounter on a referral form. In contrast, if someone had simply inquired whether a particular parcel was still available for auction, that person likely would have been handed the most recent "update sheet" of parcels available for sale. In other words, the interaction as Cohen described it was highly unlikely. Moreover, it did not fit with Cohen's usual way of conducting Indyway's business. Cohen often submitted proofs of service with letters he mailed, and requested certified copies of documents. The idea that he would have been satisfied by the oral representation of "some man" at the collector's office, without obtaining anything in writing (or even the man's name), on an issue as important as the removal of the parcels from the auction, is difficult to accept.

Third, Cohen testified that on August 11, 2003,

the day of the auction, he received an anonymous telephone call at his home, indicating that the caller had paid the taxes owed by Indyway on both parcels, and that Cohen should pick up certificates of redemption. The caller indicated that payment had been made by cash. Cohen testified that he went to the tax collector's office on August 13, 2003, and received certificates of redemption for properties 15 and 16, showing that the taxes had been paid. This testimony is unworthy of credence for several reasons, apart from the improbable nature of the existence of an anonymous property-tax paying volunteer. First, the last day to redeem the property was August 8, 2003; it was not possible for the taxes to have been paid on August 11, 2003. Second, the tax collector's records indicate that the taxes were not, in fact, paid when the property was eligible for redemption. Third, the taxes were not paid until Cooper paid in full for the property, some time after August 13, 2003. Finally, the taxes were not accounted for as paid in the tax collector's books until November 6, 2003, rendering the issuance of certificates of redemption on August 13, 2003 impossible. The County's evidence indicated that certificates of redemption would have been available for the property after November 6, 2003, and that they would have been back-dated to the August 11, 2003 date of auction. It is apparent that Indyway obtained such certificates of redemption[10] after

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[10] A certificate of redemption does not indicate the identity of the taxpayer; it indicates only that the taxes have been paid. Thus, anyone who wants to obtain proof that the taxes have been paid on a property may obtain a

November 2003, and-seeing the August 11, 2003 date of redemption-concocted the anonymous donor story in order to support its claim to the property.[11] The trial court disbelieved Cohen, specifically concluding that "the properties were not redeemed."

The trial court concluded that the County had complied with all of its notice obligations. The court therefore concluded the tax sale was proper, and quieted title to the properties in Cooper. Indyway filed a timely notice of appeal.

CONTENTIONS OF THE PARTIES

On appeal, Indyway contends the trial court erred in concluding that the County had satisfied all of its obligations prior to conducting the tax sale. Specifically, Indyway contends that the County failed in its obligations-imposed both by statute and the federal Constitution-to provide proper notice of the auction. This argument specifically relies on the fact that, had the tax collector searched its own correspondence files for addresses for Indyway, it would have found the Long Beach box. In addition to Indyway's contentions regarding the notice of auction, Indyway also finds fault with: (1) the County's temporary removal of the properties from the tax sale; (2) the County's replacement of the

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certificate of redemption.

[11] Such a blatant fabrication on a material point also constitutes a basis for the trial court to doubt Cohen's credibility as a whole. (See CACI No. 107.)

properties back into the auction shortly thereafter; and (3) the failure of the County to record additional notices of power to sell.

DISCUSSION

1. Applicable Standard of Review

When the facts are undisputed, their legal effect is resolved on appeal de novo. (*Bank of America v. Giant Inland Empire R.V. Center, Inc.* (2000) 78 Cal.App.4th 1267, 1274, 93 Cal.Rptr.2d 626.) However, when considering factual issues on which the evidence was disputed, all conflicts must be resolved in favor of the judgment, and all legitimate and reasonable inferences indulged in to uphold the judgment if possible. When a judgment is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the judgment. When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571, 38 Cal.Rptr.2d 139, 888 P.2d 1268.)

2. Substantial Evidence Supports the Trial Court's Factual Conclusions

Indyway asserts that certain of the trial court's factual conclusions are unsupported by the evidence. Specifically, Indyway challenges the trial court's

conclusions that Indyway's change of address cards had not been submitted to the County assessor, and that Indyway had actual notice of the 2003 auction with respect to both properties. Both conclusions are well-supported by the evidence. As discussed above, the trial court was justified in rejecting Indyway's testimony regarding the change of address cards, based on the contradiction between Amavisca's testimony that he had signed and mailed a single copy of the proof of service, and Indyway's possession of a purported copy of the signed proof of service. Additionally, the court relied on the County's evidence that the assessor's office would not have accepted the change of address cards without an authorization on letterhead.

The evidence also supports the trial court's conclusion that Indyway had actual notice of the 2003 auction with respect to both properties. Cohen concededly received the notice of auction of the 15 property on July 8, 2003. That day, he wrote a letter to the tax collector admitting receipt of the notice, and threatening legal action should the County proceed with the tax sale of both properties – reflecting an understanding that both properties were to be offered for sale. Indeed, Cohen's August 1, 2003 letter confirms the understanding. In that letter, Cohen represented that he had not received a notice of auction for the 16 property – a charge that would not be made if he did not know that the County intended to sell the 16 property at auction. Finally, Cohen testified that on August 6, 2003, he inquired at the tax collector's office as to the status of both parcels, which he would not have done had he

believed only parcel 15 was subject to sale. In short, the evidence that Cohen, on behalf of Indyway, had actual notice that both parcels 15 and 16 were to be sold at auction on August 11, 2003 is more than sufficient.

3. Indyway's Non-Constitutionally-Based Challenges are Not Cognizable

Revenue and Taxation Code section 3711 provides, "Except as against actual fraud, the [tax] deed duly acknowledged or proved is conclusive evidence of the regularity of all proceedings from the assessment of the assessor to the execution of the deed, both inclusive." To similar effect is the "validating" clause in Revenue and Taxation Code section 3701, governing notices of auction. Although the statute provides that the "tax collector shall make a reasonable effort to obtain the name and last known mailing address of parties of interest," the section also provides that "[t]he validity of any sale under this chapter shall not be affected if the tax collector's reasonable effort fails to disclose the name and last known mailing address of parties of interest or if a party of interest does not receive the mailed notice."

Although the language of these clauses, particularly the former, appears absolute, there is an exception for constitutionally-required procedures. The validating clauses in Revenue and Taxation Code sections 3701 and 3711 "cannot cure a jurisdictional defect, that is, one which is a constitutionally indispensable step. [Citations.] Alternatively, those

sections do cure a nonjurisdictional defect." *(Chesney v. Gresham* (1976) 64 Cal.App.3d 120, 128, 134 Cal.Rptr. 238.) A simple failure to comply with a step prescribed by the Legislature is cured by these provisions, as long as the step is not also required by the state or federal Constitutions. (*Ibid.*)

As such, while we will address Indyway's contentions that the County violated its right to federal due process, all of its remaining contentions[12]

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[12] In its brief on appeal, Indyway suggests that the tax collector committed fraud, an argument exempted from the conclusiveness of a tax deed by the express language of Revenue and Taxation Code section 3711. According to Indyway, after the tax collector received Cohen's letter of August 1, 2003 threatening legal action, the tax collector "intentionally removed" the parcels from the tax sale list, but not from the auction itself. According to Indyway, the tax collector intended to keep the parcels "removed" until the completion of the public auction. This would prevent Indyway from bringing an action to stop the auction of the properties until it was too late. Indyway further posits that Cohen's serendipitous visit to the tax collector's office on August 6, 2003 interrupted the plan. Cohen's visit forced the tax collector to not only admit that the parcels had been removed from the list "but to explain how the parcels had mysteriously changed designation." The tax collector then "cover[ed its] tracks" by replacing the properties on the auction list. Indyway did not allege fraud in its complaint, nor did it pursue this theory at trial. In any event, it is supported only by speculation, and contradicted by Cohen's own testimony. Cohen testified that he had been told that the properties had been "pulled" from the auction, not that the parcels had

are barred by the conclusive effect given to the tax deeds. Thus, the following arguments are simply not cognizable: (1) that the County failed to comply with statutory requirements for giving notice of the auction; (2) that the properties were improperly removed from the tax sale; (3) that the properties were improperly replaced in the tax sale;[13] and (4) that the County was required to record a second notice of power to sell.[14]

"changed designation." If there had been a plan to keep the properties removed from the list in order to prevent Indyway from bringing suit, telling Cohen that the parcels had been removed would have been an integral part of it-it would not have required the tax collector to cover its tracks and replace the properties on the auction list.

[13] At oral argument, Indyway argued that the removal of the properties from the auction list and their subsequent replacement amounted to a jurisdictional error. For the purposes of the argument, Indyway conceded the evidence supported the conclusions: (1) that the properties had been removed from the auction list for only a few hours; and (2) that nobody, including Cohen, had been informed of their removal during this time. In other words, Indyway argues that a three-hour mis-designation of the parcels known only to the County offices somehow deprived the County of jurisdiction to sell the parcels. Indyway has no authority to support this proposition, and we fail to see how a clerical error in these circumstances rises to the level of a constitutional violation.

[14] We note that this latter argument, on which Indyway heavily relied in challenging the auction, is simply not meritorious. Revenue and Taxation Code section 3691.1 provides that the tax collector shall execute a notice of

4. Indyway was Given Due Process

"Before a State may take property and sell it for unpaid taxes, the Due Process Clause of the Fourteenth Amendment requires the government to provide the owner 'notice and opportunity for hearing appropriate to the nature of the case.'" *(Jones v.*

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power to sell "whenever a parcel becomes subject to the power of sale set forth in [Revenue and Taxation Code s]ection 3691." This notice is then to be recorded. (Rev. & Tax.Code, § 3691.4.) Indyway takes the position that the phrase "whenever a parcel becomes subject to the power of sale" requires a new notice whenever a parcel is scheduled to be sold in a new auction. We disagree. The statute itself explains that a notice of power to sell is necessary whenever the parcel becomes subject to the power of sale as set forth in Revenue and Taxation Code section 3691. That section explains that a property becomes subject to the power of sale five years after the property has become tax defaulted. In other words, five years after a property has become tax defaulted, it is subject to the power of sale, and notice should be recorded to that effect. The property remains subject to the power of sale until it is either redeemed or sold-at which time, it may again become subject to the power of sale if another five years elapse after a tax default. The fact that a notice of power to sell might have been recorded in anticipation of a particular auction does not mean the notice of power to sell loses effect after that auction. The property became subject to the power to sell not because of a planned auction, but because the taxes remained unpaid. Therefore, a subsequent auction, based on the same unpaid taxes, does not require a second notice of power to sell.

Flowers (2006) 547 U.S. 220, 223, 126 S.Ct. 1708, 164 L.Ed.2d 415.) "[W]hen notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the [person] might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected [citations], or, where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes." (*Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 315, 70 S.Ct. 652, 94 L.Ed. 865.) Actual notice is not required to satisfy due process. The government is required only to provide notice that is reasonably calculated under all of the circumstances to apprise of the pendency of the action and give an opportunity to object. (*Jones v. Flowers, supra*, 547 U.S. 220, 226, 126 S.Ct. 1708, 164 L.Ed.2d 415.)

It has been held that when the County knows that the notice it has sent to an interested party has not been received – such as, if the notice was returned undelivered – the County is required to make reasonable efforts to renotice the party, if such efforts would impose a relatively modest administrative burden. (*Bank of America v. Giant Inland Empire R.V. Center, Inc., supra*, 78 Cal.App.4th at pp. 1276-1278, 93 Cal.Rptr.2d 626; *Sinclair & Valentine Co. v. County of Los Angeles* (1988) 201 Cal.App.3d 1021, 1027, 247 Cal.Rptr. 568.) Examples of such reasonable additional efforts might include obtaining

a preliminary title report (*Bank of America v. Giant Inland Empire R .V. Center, Inc., supra*, 78 Cal.App.4th 1267, 1278, 93 Cal.Rptr.2d 626), searching the telephone book (*ibid.*), or searching its own records (*Sinclair & Valentine Co. v. County of Los Angeles, supra*, 201 Cal.App.3d at pp. 1025, 1027, 247 Cal.Rptr. 568).

In this case, the issue of whether the County's efforts satisfied the constitutional standard of reasonableness is academic. The purpose of due process in this context is to provide the party with notice of the imminent deprivation of property and an opportunity to be heard. Here, Indyway had actual notice of the auction sale. Nor was Indyway's notice received too late for Indyway to have an opportunity to challenge the upcoming sale. Indyway was apprised of the sale one month in advance, sent more than one letter to the tax collector challenging the sale, and had an opportunity to consult with counsel. During this time, Indyway chose to claim that the notice it had received was invalid, because it had not been sent to the address Indyway had unilaterally decided was the only place it would accept mail. Due process is not a game. Once Indyway had actual notice, the Constitution was satisfied.

In any event, we conclude that the methods taken by the County in order to give notice to Indyway were not unreasonable as a matter of law. The County purchased a title report from an independent vendor, performed an internet phone book search, and checked its own records for other property owned by Indyway. Indyway argues that, in this particular

case, reasonable efforts would have included a search of the tax collector's own correspondence files, which would have revealed a history of correspondence with Indyway at the Long Beach box.[15] We disagree. That an additional address for Indyway would have been disclosed by such a search does not imply that such a search would be reasonably calculated to obtain Indyway's last known address, or that it would have been any more likely to find Indyway's address than the combination of a title search, internet search, and tax roll search. Therefore, it was not required by due process.

DISPOSITION

The judgment is affirmed. Cooper and the County shall recover their costs on appeal.

WE CONCUR: KLEIN, P.J., and KITCHING, J.

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[15] Indyway makes much of a passage in the County Tax Sale Procedural Manual, issued by the Controller, which suggests an in-house search of tax collector records may be a better starting point than a title report when compiling a party of interest list with respect to a parcel which had previously been offered for sale. The manual suggests this as a cost-saving alternative to a title report, it does not suggest that an in-house search is preferable to a title report.

Filed 4/24/07

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

B192944
(Los Angeles County Super. Ct. No. NC035452)

INDYWAY INVESTMENT,

Plaintiff and Appellant,

v.

DENNIS COOPER and
COUNTY OF LOS ANGELES,

Defendants and Respondents.

APPEAL from a judgment of the Superior Court of Los Angeles County, Judith Vander Lans, Judge. Motion to dismiss appeal denied.

Artiano, Guzman, James Artiano, Grace Lou and Eric Nakasu for Plaintiff and Appellant.

Berger Kahn, Ryan K. Hirota and James F.

Henshall, Jr. for Defendant and Respondent, Dennis Cooper.

No appearance for Defendant and Respondent, County of Los Angeles.

Appellant Indyway Investment ("Indyway") is a trust. Indyway was represented by counsel at trial, but its notice of appeal was filed by "Deron Brunson, Trustee," in propria persona. Respondent Dennis Cooper has moved to dismiss the appeal, on the basis that, since a trust cannot appear in propria persona, the notice of appeal is void. We conclude that the notice of appeal is not void, and therefore deny the motion to dismiss.

FACTUAL AND PROCEDURAL BACKGROUND

Indyway owned some properties in the County of Los Angeles ("County"). The County sold the properties at a tax sale; Cooper was the purchaser. Indyway, represented by counsel, brought suit against Cooper and the County to cancel the tax deeds and quiet title to the properties. Alternatively, Indyway sought payment of the excess sale proceeds. Cooper cross-complained against Indyway to quiet title to the properties. After a bench trial, the trial court concluded the tax sale was proper and would not be set aside. On May 8, 2006, the trial court entered judgment quieting title to the properties in favor of Cooper, but ordering the County to pay Indyway the excess proceeds from the sale. Notice of entry of judgment was served on June 15, 2006. On

July 6, 2006, Indyway filed a notice of appeal, but the notice of appeal was signed by its trustee, acting in propria persona, and not an attorney.

On November 13, 2006, Cooper filed a motion to dismiss the appeal. Cooper argued that the notice of appeal was a nullity, on the basis that no individual can represent a trust in court except a licensed attorney.[16] On December 1, 2006, Indyway obtained counsel to pursue the appeal. Indyway's counsel filed a substitution on December 5, 2006, and filed an opposition to the motion to dismiss.[17] Cooper filed a reply and we set the motion for oral argument.

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[16] Cooper also argued the appeal should be dismissed as taken from a non-appealable order. On May 8, 2006, the trial court signed the judgment. A minute order issued, reflecting that the trial court had signed the judgment. The notice of appeal unambiguously states that Indyway is appealing from the judgment entered on May 8, 2006. However, when Brunson subsequently filed the case information statement on Indyway's behalf, he mistakenly attached the May 8 minute order, rather than the judgment itself, as the "judgment or order being appealed." Cooper has presented no authority suggesting that an appeal should be dismissed as having been taken from a non-appealable order simply because the wrong document was attached to the case information statement. We can see no reason to do so, given that the notice of appeal clearly states that the appeal is taken from the judgment.

[17] Cooper had mistakenly served its motion to dismiss on Indyway's trial counsel rather than Indyway itself. Under these circumstances, we accepted Indyway's late-filed opposition.

DISCUSSION

1. *A Nonattorney Trustee May Not Represent the Trust in Propria Persona*

Our analysis begins with the rule that a *corporation* may not appear in propria persona. While a natural person who is not an attorney may appear in propria persona, a corporation is not a natural person and "can neither practice law nor appear or act in person." (*Paradise v. Nowlin* (1948) 86 Cal.App.2d 897, 898.) In court, a corporation can act only through licensed attorneys. "A corporation cannot appear in court by an officer who is not an attorney." (*Ibid.*)

There are three policy reasons for this rule. First, if a corporate agent who is not an attorney acts on behalf of the corporation in court proceedings, that individual would be engaged in the unauthorized practice of law. (*CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1146.) Attorneys are required to be licensed so that the public is protected from being advised and represented by unqualified individuals. (*Russell v. Dopp* (1995) 36 Cal.App.4th 765, 773.) Second, the rule furthers the efficient administration of justice by assuring that qualified professionals, who, as officers of the court are subject to its control and to professional rules of conduct, present the corporation's case and aid the court in the resolution of the issues. Third, the rule helps maintain the distinction between the corporation and its

shareholders, officers, and directors. (*CLD Construction, Inc. v. City of San Ramon, supra*, 120 Cal.App.4th at p. 1146.)

The rule has been applied to other situations in which an individual seeks to appear in propria persona for a person or entity for whom the individual can otherwise act. Specifically, in *City of Downey v. Johnson* (1968) 263 Cal.App.2d 775, the court held that a conservator or executor could not appear "in his representative capacity 'in propria persona' in a judicial action or proceeding which is not an integral part of the proceedings within the jurisdiction of the probate court." (*Id.* at p. 778.) As in the situation regarding the in propria persona representation of a corporation, the court was concerned with the individual engaging in the unlicensed practice of law on behalf of another entity. (*Id.* at p. 779.)

In *Ziegler v. Nickel* (1998) 64 Cal.App.4th 545, we considered whether the same rule applies to a trustee purporting to act in propria persona on behalf of a trust. In contrast to a corporation, which is a distinct legal entity from its stockholders and officers, a trust is not an entity separate from its trustee, but simply a fiduciary relationship. (*Id.* at p. 548.) Nonetheless, if the trustee appears in propria persona for the trust, the trustee would be representing the interests of others – the trust beneficiaries – and therefore engaging in the unauthorized practice of law. (*Id.* at pp. 548-549.) Thus, we concluded that a nonattorney trustee could not represent the trust in court in propria persona.

(*Id.* at p. 546.)

Indyway does not contest this conclusion; indeed, it has now obtained counsel to represent it on appeal. The issues raised by Cooper's motion to dismiss are whether Brunson was nonetheless permitted to file the notice of appeal on Indyway's behalf; and, if not, whether the appeal must be dismissed.

2. *A Nonattorney Trustee May File a Notice of Appeal on Behalf of the Trust*

We next consider whether a nonattorney trustee may file a notice of appeal on behalf of the trust without violating the prohibition against the unauthorized practice of law. California Rules of Court, former rule 1, now rule 8.100, provides, in pertinent part, that "[t]he appellant or the appellant's attorney must sign the notice [of appeal]." It also provides that "the notice of appeal must be liberally construed."

It is well established that the rule is "satisfied when *any person*, attorney or not, who is empowered to act on [the] appellant's behalf signs the notice." (*Seeley v. Seymour* (1987) 190 Cal.App.3d 844, 853.) Indeed, "[i]n permitting either the appellant or his attorney to sign the notice, the rule constitutes a liberalization and a distinct departure from the general rule that a party represented by counsel may not file papers in propria persona in the litigation." (*City of Downey v. Johnson, supra*, 263 Cal.App.2d at p. 781.) The courts therefore "draw a distinction

between the capacity of a person acting in propria persona to sign and file a notice of appeal and his capacity to execute and file pleadings, papers, and briefs in both the trial and appellate courts." (*Id.* at pp. 780-781.)

Thus, even though one sibling cannot "act as an attorney for her siblings," she may execute and file the notice of appeal on behalf of her siblings as their agent. (*Ehret v. Ichioka* (1967) 247 Cal.App.2d 637, 641.) Likewise, although a conservator or executor may not appear for the estate in propria persona, the conservator or executor may file a notice of appeal on its behalf. (*City of Downey v. Johnson, supra*, 263 Cal.App.2d at p. 782.) To similar effect is *Rogers v. Municipal Court* (1988) 197 Cal.App.3d 1314, which concluded that a corporation, acting through its president, could file a notice of appeal of a Labor Commissioner's award in propria persona. The court concluded that the corporation was not prejudiced by its president's lack of legal expertise when the issue was simply the filing of a notice of appeal. (*Id.* at pp. 1318 1319.) "Also, it would be anomalous for us to conclude that it is in the general interest of the corporation to have an attorney as its representative, but then apply that rule to penalize the corporation in this instance for filing the notice of appeal without an attorney." (*Id.* at p. 1319.)

We conclude that the same analysis should apply to a trustee acting on behalf of a trust. The trust itself, as appellant, is permitted to sign and file a notice of appeal. The only way in which the trust can perform this act is if its trustee may do so. The filing

of the notice of appeal does not constitute the trustee's unauthorized practice of law on behalf of the beneficiaries, but is simply an act of the trust itself, authorized by the Rules of Court.[18]

3. *Assuming the Notice of Appeal Was Improperly Filed, Dismissal Would Not Result*

In any event, assuming that the notice of appeal was improperly filed, dismissal does not necessarily follow. We must consider the proper remedy to be taken when a court discovers an individual is, in a representative capacity, improperly attempting to act in propria persona.

In 1948, the court in *Paradise v. Nowlin, supra*, 86 Cal.App.2d at p. 898, dismissed an appeal on its own motion when it discovered a corporation had filed its notice of appeal in propria persona. Since that time, however, the response of the courts has been much more lenient, allowing the party an opportunity to obtain counsel. In 1983, the Appellate Department of the Superior Court of San Diego County concluded, "When a corporation seeks to appear without the benefit of counsel . . . , it is the duty of the trial court

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[18] We recognize that *Paradise v. Nowlin, supra*, 86 Cal.App.2d 897, reached a different conclusion, holding that a notice of appeal filed in propria persona on behalf of a corporation was void and dismissing the appeal. The case did not, however, consider California Rules of Court, former rule 1, or whether the filing of a notice of appeal necessarily constituted the practice of law.

to advise the representative of the corporation of the necessity to be represented by a licensed lawyer." (*Van Gundy v. Camelot Resorts, Inc.* (1983) 152 Cal.App.3d Supp. 29, 31-32.) In 1998, we upheld a trial court's order informing a trustee that he had to obtain counsel to represent the trust within thirty days or face dismissal. (*Ziegler v. Nickel, supra*, 64 Cal.App.4th at p. 547, 549.) In 2001, Division Three of the Fourth Appellate District had before it an appeal by a corporation which had proceeded in propria persona during the bulk of the proceedings before the trial court and through the filing of its opening brief on appeal. (*Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1282, 1284, fn. 5.) The court noted the trial court had failed in its duty to advise the corporation of the necessity of obtaining counsel to represent it. (*Id.* at p. 1284, fn. 5.) The appellate court itself informed the corporation that its appeal would be dismissed unless it obtained counsel; the corporation obtained counsel and the appeal proceeded on its merits. (*Id.* at p. 1282.) Finally, in 2004, Division Five of the First Appellate District questioned the continuing validity of *Paradise's* absolute bar, and concluded "it is more appropriate and just to treat a corporation's failure to be represented by an attorney as a defect that may be corrected, on such terms as are just in the sound discretion of the court." (*CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1149.)

We agree with the recent authority. In this case, as soon as Cooper moved to dismiss Indyway's appeal on the basis that Indyway could not proceed in

propria persona, Indyway obtained counsel. While we conclude that Indyway's notice of appeal was valid, we acknowledge that Indyway resolved any problems with its representation by obtaining an attorney within a reasonable time. We therefore deny the motion to dismiss the appeal.

DISPOSITION

The motion to dismiss the appeal is denied.

CERTIFIED FOR PUBLICATION

CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

KITCHING, J.

APPENDIX B

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SUPERIOR COURT OF
THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

NO FEE DUE
GOV'T CODE § 6103

FILED
Los Angeles Superior Court
MAY 8 2006
John A. Clarke, Clerk
By /s/ C. Carper

INDYWAY INVESTMENT,
Plaintiff,

v.

DENNIS COOPER; COUNTY OF LOS ANGELES; and DOES 1 through 20, inclusive,
Defendants.

AND RELATED CROSS ACTION.

Case No. NC 035452
Assigned to The Hon. Judith A. Vander Lans,
Department 85 Trial Date: 8/31/2005

JUDGMENT

The above-entitled cause came on regularly for trial on August 31, 2005, in Department 85 of the above-entitled court, the Honorable Judith A. Vander Lans, Judge, presiding without a jury, and was tried on that date and on September 1, 2, 6, 7, 8, 9, 12, 13, and 14, 2005. Kenneth A. Franklin, Esq. and Tim G. Ceperley, Esq., of Rodi, Pollock, Pettker, Galbraith and Cahill, appeared as counsel for Plaintiff and Cross-Defendant Indyway Investment, Joyce M. Aiello, Principal Deputy County Counsel and Derrick M. Au, Senior Deputy County Counsel, appeared for Defendant County of Los Angeles, and Ryan K. Hirota, Esq., of Berger Kahn, and R.M. Anthony Cosio, Esq., appeared for Defendant and Cross-Complainant Dennis Cooper.

Oral and documentary evidence was introduced on behalf of the respective parties, the cause was argued, concluding briefs were submitted by counsel, and the matter was taken under submission.

The Court, having considered the evidence and heard the arguments of counsel and being fully advised, issues its judgment as follows:

ON THE COMPLAINT:

Judgment is awarded in favor of Defendants on Cause of Action 2 and 3.

Judgment is awarded in favor of Plaintiff and against the Defendant, County of Los Angeles, on

Cause of Action 4 and Plaintiff is entitled to the excess proceeds in the amount of $145.515.99.

Under CCP § 1061, the Court determines that a ruling on Cause of Action 1 is not necessary or proper because the Court has ruled substantively on the remaining causes of action which cover all of the declarations which are sought in Cause of Action 1.

ON THE CROSS-COMPLAINT:

Judgment is awarded in favor of Cross-Complainant on Cause of Action 2. Judgment is awarded in favor of Cross-Defendant on Cause of Action 3.

Under CCP § 1061, the Court determines that a ruling on Cause of Action 1 is not necessary or proper because the Court has ruled substantively on the remaining causes of action which cover all of the declarations which are sought in Cause of Action 1.

Dated: May 8, 2006

/s/ Judith A. Vander Lans
The Honorable
Judith A. Vander Lans
Judge of the Superior Court

APPENDIX C

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SUPERIOR COURT OF
THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

NO FEE DUE
GOV'T CODE § 6103

CONFORMED COPY OF
ORIGINAL F I L E D
Los Angeles Superior Court
MAY 8 2006
John A. Clarke, Clerk
By /s/ C. Carper

INDYWAY INVESTMENT,
Plaintiff,
v.
DENNIS COOPER; COUNTY OF LOS ANGELES; and DOES 1 through 20, inclusive,
Defendants.

AND RELATED CROSS ACTION.

Case No. NC 035452
Assigned to The Hon. Judith A. Vander Lans,
Department 85 Trial Date: 8/31/2005

STATEMENT OF DECISION
[CCP § 632, Cal. Rules Ct. 232]

The above-entitled cause came on regularly for trial on August 31, 2005, in Department 85 of the above-entitled court, the Honorable Judith A. Vander Lans, Judge, presiding without a jury, and was tried on that date and on September 1, 2, 6, 7, 8, 9, 12, 13, and 14, 2005. Kenneth A. Franklin, Esq. and Tim G. Ceperley, Esq., of Rodi, Pollock, Pettker, Galbraith and Cahill, appeared as counsel for Plaintiff and Cross-Defendant Indyway Investment, Joyce M. Aiello, Principal Deputy County Counsel and Derrick M. Au, Senior Deputy County Counsel, appeared for Defendant County of Los Angeles, and Ryan K. Hirota, Esq., of Berger Kahn, and R.M. Anthony Cosio, Esq., appeared for Defendant and Cross-Complainant Dennis Cooper.

Oral and documentary evidence was introduced on behalf of the respective parties, the cause was argued, concluding briefs were submitted by counsel, and the matter was taken under submission. The Court, having considered the evidence and heard the arguments of counsel and being fully advised, issued a Ruling on Submitted Matter – Tentative Decision on February 7, 2006, as follows:

The property taxes on the subject properties became delinquent for non-payment on taxes in 1992.

In 1997, the properties became subject to the power to sell by the Tax Collector.

The Tax Collector attempted to sell the properties in 1998 and in 2000; however, each of those years the subject properties were removed from sale. Each property, however, remained subject to the power to sell.

On August 11, 2003, the properties were sold at the County's tax sale to satisfy the tax delinquencies.

The required notices of impending power to sell were timely mailed to the assessee of record and properly published.

The required notices of auction were timely sent to all parties of interest and properly published.

Plaintiff had notice of the 2003 auction. The properties were not redeemed, so they were sold to Dennis Cooper and the tax deeds were properly issued to Dennis Cooper, who is the owner and the older of fee title absolute to the 2030 property and 2034 property.

Plaintiff timely requested a further statement of decision pursuant to CCP §632. The Court, incorporating and adopting herein its February 7, 2006 Ruling on Submitted Matter, hereby sets forth the factual and legal basis for its decision as to the controverted issues as raised by Plaintiff and issues the following statement of decision:

1. WITH REGARD TO THE ISSUE OF WHETHER THE COUNTY ATTEMPTED TO SELL PARCELS 15 AND 16 IN 1998 AND 2000, THE COURT'S DECISION THAT THE COUNTY DID ATTEMPT TO SELL PARCELS 15 AND 16 IN 1998 AND 2000.

The Court based its decision on the following facts:

1) Both Parcel 15 and Parcel 16 became tax defaulted for non-payment of secured property taxes on July 1, 1992;

2) A Notice of Impending Default was published in the Los Angeles Daily Journal on may 20, May 27, and June 2, 1992 (Exhibit 146);

3) A Delinquent List of defaulted properties reflecting Parcels 15 and 16 was published in the Long Beach Press-Telegram on August 27 and September 3, 1993 (Exhibit 148);

4) A Courtesy Notice was sent to Plaintiff on Parcels 15 and 16 (Reporter's Transcript, Testimony of Sharon Perkins, September 12, 2005, pg. 135, lines 9-26);

5) A Notice of Power to Sell Tax-Defaulted Property was recorded for Parcel 15 as Los Angeles Document No. 97-1265654 on August 15, 1997 (Exhibit 116, Reporter's Transcript, Testimony of Martha Duran, September 7, 2005, a.m. session, pg. 168, lines 9-12, 23-28);

6) A Notice of Power to Sell Tax-Defaulted Property was recorded for Parcel 16 as Los Angeles Document No. 97-1265655 on August 15, 1997 (Exhibit 116, Reporter's Transcript, Testimony of Martha Duran, September 7, 2005, a.m. session, pg. 168, lines 13-22);

7) Both parcels were scheduled to be sold at the County's 1998A Tax Sale;

8) Both parcels were included in the auction notification process for the 1998A Tax Sale;

9) The Tax Collector received a letter from Frank Gabriel of Hudson Mortgage Bankers which provided that the defaulted taxes would be paid from the proceeds of a loan that was being processed (Exhibit 123);

10) The defaulted taxes were not paid, and Parcels 15 and 16 were removed from the 1998A Tax Sale, but remained subject to power to sell;

11) Parcels 15 and 16 were next prepared for sale for defaulted taxes for the 2000B Tax Sale;

12) Both parcels were included in the auction notification process for the 2000B Tax Sale;

13) In preparing the files for the 2000B Tax Sale, the Tax Collector determined that the notification process for Parcels 15 and 16 was not complete (Reporter's Transcript, Testimony of Martha Duran, September 7, 2005, a.m. session, pg. 64, lines 1-2;

14) Parcels 15 and 16 were not offered for sale in the 2000B Tax Sale; and

15) The defaulted taxes were not paid, and the parcels remained subject to power to sell.

The legal basis for the Court's decision that the Tax Collector's efforts to sell Parcels 15 and 16 is, namely;

1) Publication of Impending Default (Revenue and Taxation Code §§ 3351, 3352);

2) Publication of the list of delinquent properties (Revenue and Taxation Code §§ 3371, 3372);

3) Publication of the list of tax-defaulted properties that are subject to the impending power and intent of the tax collector to sell (Revenue and Taxation Code §§ 3361, 3362);

4) Publication of properties scheduled to be sold at tax auction (Revenue and Taxation Code § 3702);

5) The Recorded Notice of Power to Sell Tax Defaulted Property stays in effect until the taxes are paid and the property is redeemed (Revenue and Taxation Code § 4112); and

6) Including Parcels 15 and 16 in the auction notification process for the 1998A and 2000B Tax Sales constitute an attempt to sell Parcels 15 and 16 in 1998 and 2000, in fulfillment of the requirements

of Revenue and Taxation Code § 3692).

2 WITH REGARD TO THE ISSUE OF WHETHER NOTICES OF AUCTION FOR PARCEL 15 AND 16 WERE MAILED TO PARTIES OF INTEREST, THE COURT'S DECISION IS THAT ALL NOTICES OF AUCTION WERE SENT TO ALL PARTIES OF INTEREST PURSUANT TO REVENUE AND TAXATION CODE § 3701.

The Court based its decision on the following facts:

1) Parcel 15 and 16 were transferred to Indyway Investment by Rudy A. and Melissa P. Diaz on May 8, 1992 (Exhibit 118);

2) The deed referencing such transfer was recorded as Los Angeles Document No. 92-844769 on May 11, 1992, and instructs that when recorded, the document should be mailed to: Indyway Investment c/o P.O. Box 832, N. Hollywood, California, D.D.M. 122.32 Zip Exempt (Exhibit 118, Reporter's Transcript, Testimony of Steve Hourigan, pg. 193, lines 1-4);

3) The Notice of Auction needed to be mailed to parties of interest as defined in Revenue and Taxation Code § 4875 (Reporter's Transcript, Testimony of Steve Hourigan, pg. 191, lines 13-15);

4) For the 2003B Tax Sale, the County ordered a Parties of Interest Report from M.F.I. Title

Company of Parcels 15 and 16 to determine parties of interest to mail the Notice of Auction to (Exhibits 157, 158; Reporter's Transcript, Testimony of Steve Hourigan, pg. 192, lines 9-23);

5) A Parties of Interest Report is a report that shows which parties of interest should receive a Notice of Auction as defined in Revenue and Taxation Code § 4875 (Reporter's Transcript, Testimony of Steve Hourigan, pg. 193, lines 20-24);

6) For the 2003B Tax Sale, the Notice of Auction for Parcel 15 and Parcel 16 was mailed to P.O. Box 832, North Hollywood, CA 91607 (Reporter's Transcript, Testimony of Steve Hourigan, pg. 194, liens 22-28, 195, lines 1-20);

7) For the 2003B Tax Sale, the Notice of Auction for Parcel 15 was mailed to the situs address, 2034 West 15th Street, Long Beach, CA 90813-1004 (Reporter's Transcript, Testimony of Steve Hourigan, pg. 196, lines 17-21);

8) For the 2003B Tax Sale, the Notice of Auction for Parcel 16 was mailed to the situs address, 2030 West 15th Street, Long Beach, CA 90813-1004 (Reporter's Transcript, Testimony of Steve Hourigan, pg. 196, lines 10-14);

9) For the 2003B Tax Sale, the Tax Collector did a Superpages Internet Search for parties of interest (Reporter's Transcript, Testimony of Martha Duran, September 7, p.m. session, pg. 10, lines 22-26);

10) For the 2003B Tax Sale, the Tax Collector checked the County's databases to see if other properties were owned by Indyway Investment to identify additional address for parties of interest (Reporter's Transcript, Testimony of Martha Duran, September 7, p.m. session, pg. 10, lines 27-28; 11, lines 1-2);

11) The Tax Collector established and followed a reasonable procedure to notify parties of interest (Reporter's Transcript, Testimony of Steve Hourigan, pg. 199, lines 1-16; pg. 211, lines 18-28);

12) Indyway Investment did not change its official mailing address with the County Assessor from P.O. Box 832, North Hollywood, CA 91607 to P.O. Box 6052, Long Beach, CA 90806 (Testimony of John Moreno, Exhibit 2); and

13) The only addresses that the Tax Collector was required to send were to the official mailing address with the County Assessor (P.O. Box 832, North Hollywood, CA 91607) and the situs address (Reporter's Transcript, Testimony of Steve Hourigan, pg. 199, lines 1-6).

The legal basis for the Court's decision that notices of auction for parcel 15 and 16 were mailed to parties of interest is, namely;

1) The Tax Collector was required under Revenue and Taxation Code § 3701 to send notice of the proposed tax sale by certified mail with return receipt requested, to the last known address of

parties of interest as defined in Revenue and Taxation Code § 4875, and to make a reasonable effort to obtain the last known mailing address of parties of interest. The Tax Collector fulfilled the requirements of Revenue and Taxation Code § 3701, and was successful in that Plaintiff received actual notice of the 2003B Tax Sale.

3 WITH REGARD TO THE ISSUE OF WHETHER INDYWAY RECEIVED NOTICE OF THE TAX SALE FOR PARCELS 15 AND 16 FOR THE 2003B TAX SALE, THE COURT'S DECISION IS THAT INDYWAY RECEIVED NOTICE OF THE 2003B TAX SALE FOR PARCELS 15 AND 16.

The Court based its decision on the following facts:

1) Kedar Cohen testified that he was Successor Trustee of the Indyway Trust;

2) Mr. Cohen testified that Indyway treated all parcels, including Parcels 13, 14, 15, and 16, as one;

3) Mr. Cohen testified that he received the Notice of Auction from a tenant at 2725 Baltic Avenue, Long Beach;

4) In Exhibit 20, a letter dated July 8, 2003 from Mr. Cohen to Mark J. Saladino, Los Angeles County Treasurer and Tax Collector, Mr. Cohen states that he received the Notice of Auction for Parcel 15 and Mr. Cohen testified that his signature

is on the letter;

5) Mr. Cohen testified that he prepared the letter and that it was sent by Frank Hernandez;

6) In the letter, Mr. Cohen threatens to sue the County if it proceeds with the tax sale, and specifically references Parcel 15 and Parcel 16.

The legal basis for the Court's decision that Indyway received notice of the tax sale for parcels 15 and 16 for the 2003B tax sale is, namely:

1) The Tax Collector was required to send a Notice of Auction to the last known mailing address of parties of interest pursuant to Revenue and Taxation Code § 3701 and did, and Indyway received actual notice of the Notice of Auction.

4. WITH REGARD TO THE ISSUE OF WHETHER PARCELS 15 AND 16 WERE REMOVED FROM THE PUBLIC AUCTION FOR THE 2003B TAX SALE, THE COURT'S DECISION IS THAT THE PARCELS WERE NOT REMOVED FROM THE PUBLIC AUCTION.

The Court based its decision on the following facts:

1) The parcels were always included in the Tax Collector's 2003B tax sale. (Reporter's Transcript, Testimony of Martha Duran, September 7, a.m. session, pg. 70, lines 16-22).

2) The parcels were not removed from the 2003B tax sale, but were temporarily designated to be sold through the Chapter 8 process, rather than at a public auction. (Reporter's Transcript, Testimony of Martha Duran, September 7, a.m. session, pg. 69, lines 7-15; and pg. 71, lines 1-4; Reporter's Transcript, Testimony of Sharon Perkins, September 12, a.m. session, pg. 32, line 11 and pg. 34, line 26- pg. 35, lines 16-22).

3) The only way a temporary designation of the parcels to be sold through the Chapter 8 process could have impacted the Tax Collector's ability to sell the parcels was if a statutory deadline for a required notice or publication had been missed. (Reporter's Transcript, Testimony of Martha Duran, September 7, a.m. session, pg. 83, line 15 - page 84, line 1; Reporter's Transcript, Testimony of Sharon Perkins, September 12, a.m. session, pg. 55, lines 11-22).

4) There was no written notification of the removal of either Parcel 15 or Parcel 16 from the 2003B tax sale by the Tax Collector to the State Controller, as required by Revenue and Taxation Code § 3698.8. (Reporter's Transcript, Testimony of Steve Hourigan, September 13 session, pg. 203, line 11 - pg. 204, line 2).

5) Without written notification by a tax collector, with the consent of county counsel, to the State Controller, a parcel is not removed from a tax sale. (Reporter's Transcript, Testimony of Steve Hourigan, September 13 session, pg. 224, line 6 - pg. 225, line 18).

The legal basis for the Court's decision that the parcels were not removed from the public auction is, namely:

1) Revenue and Taxation Code § 3898.8 provides that a parcel may only be removed from a tax sale with the recommendation of county counsel and further provides that the tax collector must provide written notice of the removal of any parcel from a tax sale to the State Controller.

5. WITH REGARD TO THE ISSUE OF WHETHER TAX BILLS WERE SENT TO PLAINTIFF INDICATING THAT THE PRIOR YEAR TAXES WERE IN DEFAULT ON PARCELS 15 AND 16, THE COURT'S DECISION IS THAT SUCH TAX BILLS REFLECTING SUCH NOTICE WERE SENT TO PLAINTIFF ON PARCELS 15 AND 16.

The Court based its decision on the following facts:

1) Martha Duran testified that if taxes become defaulted, the next annual tax bill will have a notice that there are defaulted taxes for a prior year, and this notation will be reflected on all subsequent annual tax bills until the delinquent taxes are paid (Reporter's Transcript, Testimony of Martha Duran, September 6, 2005, pg. 97, line 28, 98, lines 1-3); Ms. Duran further testified that a substitute tax bill for Parcels 15 and 16, Exhibit 59, had a notation that there are other taxes due on the property, alerting Plaintiff that there are unpaid prior year taxes on the

property (Reporter's Transcript, Testimony of Martha Duran, September 6, 2005, pg. 99, lines 19-28).

The legal basis for the Court's decision that tax bills were sent to Plaintiff indicating that the prior year taxes were in default on Parcels 15 and 16 is, namely:

1) Revenue and Taxation Code § 2612 states that a tax bill for tax-defaulted property shall reflect a notice that prior year taxes are in default which would indicate that the property is in jeopardy as a result of delinquent prior year taxes, and since the County does include such a notice on its annual tax bills subsequent to property becoming defaulted, the requirements of Revenue and Taxation Code § 2612 have been met in the instant matter.

Dated: May 8, 2006.

/s/ Judith A. Vender Lans
The Honorable
Judith A. Vender Lans
Judge of the Superior Court

APPENDIX D

D-1

Court of Appeal, Second Appellate District
Div. 5 – No. B192944
S163443

SUPREME COURT
FILED
JUN 25 2008
Frederick K. Ohlrich Clerk

Deputy

IN THE
SUPREME COURT OF CALIFORNIA

En Banc

INDYWAY INVESTMENT
Plaintiff and Appellant,
v.
DENNIS COOPER and
COUNTY OF LOS ANGELES
Defendants and Respondents.

The petition for review is denied.

George, C.J., was absent and did not participate.
Corrigan, J., was absent and did not participate.

CHIN
Acting Chief Justice

APPENDIX E

U. S. CONSTITUTIONAL PROVISIONS

U.S.C.A. Const. Amend. V

Amend. V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Just Compensation for Property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S.C.A. Const. Amend. XIV

Amend. XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Appointment of Representation; Disqualification of Officers; Public Debt; Enforcement

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or

immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the

same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

APPENDIX F

28 U.S.C.A. §1257

§1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

APPENDIX G

WEST'S ANNOTATED CALIFORNIA REVENUE AND TAXATION CODE

Division 1. Property Taxation
Part 6. Tax Sales
Chapter 1. Publication of Delinquent List and Notice of Sale
Article 1.5. Deeds to the State

§3365. Mailing notice of default and power to sell property to last assessee

After the first publication of the notice and not less than 21 days nor more than 35 days before July 1, the tax collector shall send by registered mail to the last assessee of the tax-defaulted property at his or her last known address a notice of default and power to sell the property for nonpayment of taxes. The tax collector shall make a reasonable effort to ascertain the address of the last assessee of the tax-defaulted property, including, but not limited to, an examination of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll, an examination of the most recent telephone books in the county in which the tax-defaulted property is located, and an examination of the telephone book covering the area of the last known address of the last assessee.

Any failure of the tax collector to make a reasonable effort to ascertain the address of the last assessee as required by this section shall not affect the validity of any subsequent sale to satisfy the lien of unpaid taxes.

WEST'S ANNOTATED CALIFORNIA REVENUE AND TAXATION CODE

Division 1. Property Taxation
Part 6. Tax Sales
Chapter 7. Sale to Private Parties After Deed to State

§ 3691. Power to sell; sale of part of parcel; tax-defaulted parcels; definitions; notice of intended sale; nuisance abatement liens

(a)(1)(A) Five years or more, or three years or more in the case of nonresidential commercial property, after the property has become tax defaulted, the tax collector shall have the power to sell and shall attempt to sell in accordance with Section 3692 all or any portion of tax-defaulted property that has not been redeemed, without regard to the boundaries of the parcels, as provided in this chapter, unless by other provisions of law the property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to, or interest in, the property, may purchase at the sale. In the case of tax-defaulted property that has been damaged by a disaster in an area declared to be a disaster area by local, state, or federal officials and whose damage has not been substantially repaired, the five-year period set forth in this subdivision shall be tolled until five years have elapsed from the date the damage to the property was incurred.

(B) A county may elect, by an ordinance or

resolution adopted by a majority vote of its entire governing body, to have the five-year time period described in subparagraph (A) apply to tax-defaulted nonresidential commercial property.

(C) For purposes of this subdivision, "nonresidential commercial property" means all property except the following:

(i) A constructed single-family or multifamily unit that is intended to be used primarily as a permanent residence, is used primarily as a permanent residence, or that is zoned as a residence, and the land on which that unit is constructed.

(ii) Real property that is used and zoned for producing commercial agricultural commodities.

(2) When a part of a tax-defaulted parcel is sold, the balance continues subject to redemption and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2 (commencing with Section 4131) of Part 7.

(3) The tax collector shall provide notice of an intended sale under this subdivision in the manner prescribed by Sections 3704 and 3704.5 and any other applicable statute. If the intended sale is of nonresidential commercial property that has been tax-defaulted for fewer than five years, all of the following apply:

(A) On or before the notice date, the tax collector shall also mail, in the manner specified in

paragraph (1) of subdivision (c) of Section 2924b of the Civil Code, notice containing any information contained in the publication required under Sections 3704 and 3704.5 to, as applicable, all of the following:

(i) The parties specified in paragraph (2) of subdivision (c) of Section 2924b of the Civil Code.

(ii) Each taxing agency specified in paragraph (3) of subdivision (c) of Section 2924b of the Civil Code.

(iii) Any beneficiary of a deed of trust or a mortgagee of any mortgage recorded against the nonresidential commercial property, and any assignee or vendee of these beneficiaries or mortgagees.

(B) For purposes of this paragraph:

(i) "Notice date" means a date not less than 45 days nor more than 120 days before an intended sale or not less than 45 days nor more than 120 days before the date upon which the property may be sold.

(ii) "Recording date of the notice of default" as used in subdivision (c) of Section 2924b of the Civil Code means a date that is 30 days before the notice date.

(iii) "Deed of trust or mortgage being foreclosed" as used in subdivision (c) of Section 2924b of the Civil Code means the defaulted tax lien.

(b)(1)(A) Three years or more after the property has become tax defaulted and a request has been made by a city, county, city and county, or nonprofit organization pursuant to Section 3692.4, or a request has been made by a person or entity that has recorded a nuisance abatement lien on that property, to offer that property at the next scheduled tax sale, the tax collector shall have the power to sell and may sell all or any portion of tax-defaulted property that has not been redeemed, without regard to the boundaries of parcels, as provided in this chapter at the next scheduled tax sale, unless by other provisions of law the property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to, or interest in, the property, may purchase at the sale.

(B) When a part of a tax-defaulted parcel is sold, the balance continues subject to redemption and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2 (commencing with Section 4131) of Part 7.

(2) Before the tax collector sells vacant residential developed property pursuant to this subdivision, actual notice, by certified mail, shall be provided to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.

(3) Before the tax collector sells vacant residential developed property pursuant to this subdivision,

notice of the sale shall be given in the manner specified by Section 3704.7.

(c) The amendments made to this section by the act [FN1] adding this subdivision apply to property that becomes tax defaulted on or after January 1, 2005.

[FN1]Stats.2004, c. 944 (A.B.2144).

§ 3691.1. Notice of parcel becoming subject to power of sale; acknowledgment

The tax collector shall execute a notice whenever a parcel becomes subject to the power of sale set forth in Section 3691 on a form prescribed by the Controller. The county clerk shall take acknowledgment of the notice without charge.

§ 3691.4. Recording of notice; no charge

The notice shall be recorded with the county recorder. After recordation, the notice shall be forwarded to the tax collector. The recorder shall make no charge for the recording.

§ 3701. Parties of interest; notice

Not less than 45 days nor more than 120 days before the proposed sale, the tax collector shall send notice of the proposed sale by certified mail with return receipt requested to the last known mailing

address, if available, of parties of interest, as defined in Section 4675. The notice shall state the date, time, and place of the proposed sale, the amount required to redeem the property, and the fact that the property may be redeemed up to the close of business on the last business day prior to the date of the sale, and information regarding the rights of parties of interest to claim excess proceeds, as defined in Section 4674, if the property is sold and excess proceeds result from that sale.

The tax collector shall make a reasonable effort to obtain the name and last known mailing address of parties of interest.

The validity of any sale under this chapter shall not be affected if the tax collector's reasonable effort fails to disclose the name and last known mailing address of parties of interest or if a party of interest does not receive the mailed notice.

§ 3711. Deed; conclusive evidence, exception

Except as against actual fraud, the deed duly acknowledged or proved is conclusive evidence of the regularity of all proceedings from the assessment of the assessor to the execution of the deed, both inclusive.

§ 3712. Title conveyed; encumbrances

The deed conveys title to the purchaser free of all encumbrances of any kind existing before the sale, except:

(a) Any lien for installments of taxes and special assessments, that installments will become payable upon the secured roll after the time of the sale.

(b) The lien for taxes or assessments or other rights of any taxing agency that does not consent to the sale under this chapter.

(c) Liens for special assessments levied upon the property conveyed that were, at the time of the sale under this chapter, not included in the amount necessary to redeem the tax-defaulted property, and, where a taxing agency that collects its own taxes has consented to the sale under this chapter, not included in the amount required to redeem from sale to the taxing agency.

(d) Easements constituting servitudes upon or burdens to the property; water rights, the record title to which is held separately from the title to the property; and restrictions of record.

(e) Unaccepted, recorded, irrevocable offers of dedication of the property to the public or a public entity for a public purpose, and recorded options of any taxing agency to purchase the property or any interest therein for a public purpose.

(f) Unpaid assessments under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code) that are not satisfied as a result of the sale proceeds being applied pursuant to Chapter 1.3 (commencing with Section 4671) of Part 8, or that are being collected through a foreclosure action pursuant to Part 14 (commencing with Section 8830) of Division 10 of the Streets and Highways Code. A sale pursuant to this chapter shall not nullify, eliminate, or reduce the amount of a foreclosure judgment pursuant to Part 14 (commencing with Section 8830) of Division 10 of the Streets and Highways Code.

(g) Any federal Internal Revenue Service liens that, pursuant to provisions of federal law, are not discharged by the sale, even though the tax collector has provided proper notice to the Internal Revenue Service before that date.

(h) Unpaid special taxes under the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code) that are not satisfied as a result of the sale proceeds being applied pursuant to Chapter 1.3 (commencing with Section 4671) of Part 8, or that are being collected through a foreclosure action pursuant to Section 53356.1 of the Government Code. A sale pursuant to this chapter shall not nullify, eliminate, or reduce the amount of a foreclosure judgment pursuant to Section 53356.1 of the Government Code.

Division 1. Property Taxation
Part 7. Redemption
Chapter 1. Redemption Generally

§4105. Tax collector to be redemption officer; application to redeem

The tax collector shall be the redemption officer of the county. Application to redeem shall be made to the tax collector.

§4105.2. Certificates; contents

When tax-defaulted property is redeemed and upon the request of the redemptioner, the tax collector shall issue a certificate of redemption. With the approval of the Controller as to form, each certificate of redemption shall show:

(a) The year of default.

(b) A description of the property.

(c) The amounts to be paid.

(d) The name of the person making the payment.

(e) The date of redemption.

Notwithstanding any other provisions of this code, where no physical document of the extended redemption certificate is prepared, all entries required to be made on the extended certificate shall be so stored that it can be made readily available to

the public in an understandable form.

§ 4112. Collection of fees; effect of redemption; execution and recording of rescission of notice

(a) When tax-defaulted property subject to the notice recorded under Section 3691.4 is redeemed, the tax collector shall collect all of the following, in addition to the amount required to redeem:

(1) A fee of thirty-five dollars ($35) that shall be distributed to the county general fund to reimburse the county for its cost of obtaining the names and last known mailing addresses of, and for mailing notices required by Section 3701 to, parties of interest as defined by Section 4675.

(2) A fee in the amount required by Section 27361.3 of the Government Code that shall be distributed to the county recorder for the cost of recordation of a rescission of the notice, as required by subdivision (c).

(3) A fee of one hundred fifty dollars ($150) if redemption is within 90 days of the proposed date for the tax sale of the redeemed property. In the case of unsold tax sale properties remaining on the abstract after the tax sale, the fee shall become a part of the redemption amount and collectible whenever the property is redeemed. The fee shall be distributed to the county general fund to reimburse the county for costs incurred by the county in preparing to conduct that sale.

(4) The amount described in subdivision (c) of Section 3704.7 to reimburse the county for the cost of a personal contact required by that section.

(b) Notwithstanding subdivision (a), if the tax-defaulted property is redeemed prior to the proposed sale, but after the county has incurred notice or publication costs pursuant to Section 3702 in connection with a notice of intended sale, a fee in an amount reasonably necessary to reimburse the tax collector for those costs may be collected.

(c) When tax-defaulted property subject to the notice recorded under Section 3691.4 is redeemed, the notice becomes null and void and the tax collector shall execute and record with the county recorder a rescission of the notice in the form prescribed by the Controller. The rescission shall be acknowledged by the county clerk, without charge.

(d) Any fee imposed under paragraph (1) of subdivision (a) or subdivision (b) shall be subject to the requirements of Section 54986 of the Government Code.

No. 08-392

IN THE

Supreme Court of the United States

INDYWAY INVESTMENT,
Petitioner,

vs.

DENNIS COOPER and
COUNTY OF LOS ANGELES,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEALS
SECOND APPELLATE DISTRICT, DIVISION THREE

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

R. M. ANTHONY COSIO
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No. 08-392

IN THE

Supreme Court of the United States

INDYWAY INVESTMENT,
Petitioner,

vs.

DENNIS COOPER and
COUNTY OF LOS ANGELES,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEALS
SECOND APPELLATE DISTRICT, DIVISION THREE

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDING

Respondents in this proceeding are Dennis Cooper, an individual and the County of Los Angeles. Neither party is a corporation.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iv

I. INTRODUCTION 1

II. STATEMENT OF THE CASE 8

III. REASONS FOR DENYING INDYWAY'S PETITION 16

A. Indyway Never Raised the Conflicts Between the Three Statutes as Issues at Trial and the Court of Appeal's Opinion Does Not Adjudicate Any Issues about Conflicts of Those Statutes 16

B. As the Court of Appeal Never Decided a Federal Question Regarding Due Process As it Pertains to The Revenue and Tax Code Conflicts, There Is No Ground For Review 17

C. The Unequivocal Language of Section 3691.1 Was Followed by the County's Recordation of Notice of Power to Sell Real Property; There Is No Conflict among Sections 3711 and 3691.1 and They Do Not Violate Due Process of Law 18

Page

D. The County Did Not Rescind the Original Notice of Power to Sell the Real Property and Indyway Did Not Redeem the Property; Thus, Destroying the Foundation of Indyway's Purported Second Issue 20

E. The Trial and Appellate Court's Findings That the Subject Properties Were Never Removed From The Tax Auction Such That Any Due Process or Constitutional Notice Violation Was Created Were Proper 22

F. Indyway Cannot Allege Any Defects Which Are Not Cured by the Issuance of The Duly Acknowledged Tax Deed Pursuant to Revenue and Taxation Code Section 3711 23

G. There is No Conflict or Ambiguity in the Language of Revenue and Taxation Code Sections 3691 and 3691.1 26

H. The Tax-Defaulted Status of the Subject Properties Was Cured By Cooper's Purchase, Not By Any Pre-Auction Redemption 27

V. CONCLUSION 29

TABLE OF AUTHORITIES

Page

Cases

Chesney v. Gresham (1976)
64 Cal.App.3d 120 23

Herrington v. Weigel,
82 Cal.App.3d 676 (1978) 20

In re S.C. (2006)
138 Cal.App.4th 396, ... 24

Jones v. Flowers (2006)
547 U.S. 220, 126 S. Ct. 1708,
164 L.Ed 2d 415 5

McMaster v. City of Santa Rosa (1972)
27 Cal.App.3d 598 24

Miller v. McKenna (1944)
23 Cal.2d 774 ..... 23, 24

Mullane v. Central Hanover Bank &
Trust Co. (1950) 339 U.S. 306,
70 S.Ct. 652, 94 L.Ed. 865 ..... 5, 25

Pennsylvania Dept. of Corrections v. Yeskey,
524 U.S. 206 (1998) 7, 16

Security Investment Company of Riverside
v. Douglas (1946) 76 Cal.App.2d 592 24

Page

Statutes

California *Revenue and Taxation Code*
section 3601.1 28
section 3691 et seq.. ..... 1, 2, 3, 26
section 3691.1 ..... 1, 8, 18, 19, 26
section 3692 12
section 3698.5 27
section 3698.8 22
section 3701 ..... 12, 14, 15, 21
section 3711 ..... 1, 18-21, 23, 24, 28
section 4112(c) 1, 12, 20, 21, 28
section 4675 ..... 12, 13

Rules

Supreme Court Rule 10(c) 6, 16, 17

I.

INTRODUCTION

Petitioner Indyway Investment ("Indyway") asks this Court to grant review of the California Court of Appeal's unpublished opinion to resolve perceived conflicts between California *Revenue and Taxation Code sections 3711, 3691.1, and 4112(c)*[1] because Indyway claims that when these statutes are applied, they violate the Fifth and Fourteenth Amendments by taking property without due process of law. Petitioner's request mirrors their earlier Petition for Writ of Certiorari under a related case which was recently denied.[2]

Indyway contends that this case presents a conflict among code sections in the California Revenue and Taxation Code that controls the sale of tax defaulted real property in California in a way

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[1] All further statutory references are to the California Revenue and Taxation Code unless otherwise indicated.

[2] Refer to *Indyway v. Opri, et.al*, (2007) USSC 2007-1479-02, *cert. cenied*. This case involves the same Petitioner, the same federal due process violation issues by the County of Los Angeles and the same questions posited here for judicial review. Prior to losing the properties in the instant case, Indyway had lost two other properties for the same reasons as the instant case — failure to pay taxes. Indyway claimed due process violations through a malpractice action against their attorney after losing their lower court trial.

that merits review by this Court. Indyway is simply wrong in its contentions.

As it did in the trial court and the California Court of Appeal, Indyway once again attempts to rely on its distorted version of facts which are based on evidence found by both the trial court and the appellate court to be lacking in credibility, and in some instances completely fabricated, to advance its theories that are not supported by law or facts.

The plain truth of this matter is as follows:

- Indyway did not pay its lawfully assessed and levied real property taxes on multiple parcels of land in Los Angeles County for many years.

- Those parcels of land became tax-defaulted and, ultimately, became subject to the tax collector's power of sale pursuant to *section 3691, et. seq.*

- Notices of the tax-default, the power to sell and the impending auction sale of Indyway's properties were properly published, recorded and mailed in accordance with the applicable California Revenue and Taxation Code sections and constitutional due process requirements.

- Indyway had *actual notice* of the date, time, and location of the pending of the two tax defaulted parcels which are the subject of this action and had *actual* knowledge of the last day to redeem the parcels from default and the amount required to be paid to accomplish the

redemption.

- The two tax-defaulted parcels which are the subject of this action were lawfully sold to Respondent, Dennis Cooper, as the highest bidder, at the Los Angeles County's tax auction in 2003.

- The two tax-defaulted properties were never redeemed from defaulted status by Indyway, or any other party, prior to the sale of those parcels at auction sale in August 2003.

- The two tax-defaulted properties were never removed from the public auction process before the date of the date of the tax auction.

Notwithstanding all of the above, Indyway chose, once again, as it done for years, not to pay its taxes and, as a result, the properties were sold by the County to Respondent, Dennis Cooper, at the properly noticed public auction in an effort to satisfy the outstanding tax liability.

Indyway contends that the trial and appellate courts erred in their application of the law to the facts presented by it. Further, Indyway contends that sections in the California Revenue and Taxation Code which govern the imposition of the tax collector's power to sell tax defaulted property (*3691, et. seq.*), state that the issuance of a tax deed is conclusive evidence of the regularity of the proceedings leading up to its issuance (*3711*), and address the redemption of tax-defaulted property

(*4112*) are somehow conflicting and results in a violation of Indyway's constitutional rights of due process. Again, Indyway's arguments are based on its distorted and, in many instances, fabricated evidence and misapplication of the law.

The trial and appellate court's ruling are consistent with applicable case law and the legislative intent behind each cited Revenue and Taxation Code sections. Further, the trial and appellate court found no due process violations.

In Indyway's Court of Appeal Opening Brief, Indyway states that the tax deed should be cancelled for the following factual contentions:

1. Appellant did not have actual notice of the tax sale.

2. The Tax Collector did not send notice to Appellant "proper mailing address."

3. The Tax collector used an outside service to compile addresses for Appellant.

4. The Tax Collector changed the designations of the parcels from Public Auction to Agreed Sale.

5. The Tax Collector "removed" the parcels from the public auction only to return the parcels back on the same day.

6. The tax Collector fraudulently informed Appellant that the parcels were pulled from the sale.

7. The tax collector did not send tax bills to Appellant; and,

8. The tax Collector failed to file a new power to sell.

Indyway never raised conflicts of any of the three Revenue and Tax Code statutes as issues at trial. Similarly, Indyway never raised any statutory conflicts as issues in its Appellant's Opening brief ("AOB"). The appellate court addressed Indyway's contentions that the County violated its right to federal due process; however, in doing so, the court stated that Indyway's remaining factual contentions (outlined above) were barred. These contentions were found *not* cognizable by the appellate court and included the following arguments: 1) that the County failed to comply with statutory requirements for giving notice of the auction; 2) that the properties were improperly removed from the tax sale; 3) that the properties were improperly replaced in the tax sale, and 4) that the County was required to record a second notice of power to sell.

In addressing the federal due process argument, the appellate court relied on the notice required by *Jones v. Flowers* (2006) 547 U.S. 220, 223, 126 S. Ct. 1708, 164 L.Ed 2d 415 outlining the "government's required notice that is reasonably calculated under all of the circumstances to apprise of the pendency of the action and give an opportunity to object" (*supra*, at p. 226) coupled with the means of notice as set forth in *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 315, 70 S.Ct. 652, 94 L.Ed.

865. The appellate court concluded that the methods taken by the County in order to give notice to Indyway were not unreasonable as a matter of law. Thus, the due process standards were met.

Nonetheless, Indyway posits two issues grounded upon these three Revenue and Tax Code statutes for this Court's review. (Indyway's petition, p. i, Questions Presented.) Indyway's petition is patently defective for several reasons.

First and predominantly, this Court's review lies from the Court of Appeal's decision. *Supreme Court Rule 10(c)*. As the Court of Appeal has not issued a decision based on any conflict of the three statutes set forth in Indyway's petition, there is nothing for this Court to review about these statutes. It is axiomatic that "'[where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them.'" *Pennsylvania Dept. of Corrections v. Yes/wy,* 524 U.S. 206, 212-213 (1998) (quoting *Adickes v. S.H. Kress & Co.,* 398 U.S. 144, 147, n. 2 (1970)).

Second, Indyway never identifies any ground for review under *Supreme Court Rule 10(c)*, e.g., a state court has decided an important federal question in a way that conflicts with a decision of another state court or a United States court of appeals, a state court has decided an important question of federal law that has not been but should be settled by this court, or a state court has decided an important federal question in a way that conflicts with a decision by this court. Here, the Court of Appeal

concluded the issue of whether the County's efforts satisfied the constitutional standard of reasonableness was academic. The conflict of the California statutes and Indyway's newly-asserted violation of constitutional due process allegation were never in issue since this case and Indyway's appeal arise out of factual disputes which were adjudicated at the trial court level in favor of the County of Los Angeles and Dennis Cooper, which Petitioner never challenged the constitutional validity of the statutes.

Irrespective of Indyway's faulty petition, these statutes are not in conflict and do not violate due process, as asserted by Indyway. As discussed below, they are clear and operate in harmony with each other and afford all necessary due process requirements. Considering the substantial evidence adduced in both Cooper's and the County of Los Angeles's favor at trial (A-19, A-20)[3], plus the trial court's express finding that Indyway's witnesses testified to a "different, and highly improbable, view of the facts" (A-14), review of Indyway's two issues would not be of any benefit to the public or to the body of case law. Review would not yield any significant pronouncements on these statutes.

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[3] References to the Appellate Court decision incorporated in Petitioner's petition as Appendix A are prefaced by "A-page number".

II.

STATEMENT OF THE CASE

Indyway is a trust established in 1992. It was created to evade taxes. (A-7) The trust document indicates that, by purchasing real property for 21 silver dollars of a specific purity, it creates a special status whereby the property is exempt from normal taxation such as property taxes. (*id.* at A-7) Five parcels of real property were transferred to Indyway in 1992. Indyway refused to pay on four of the five parcels. (A-8) The County recorded Notices of Power to Sell on four of the five properties on August 15, 1997. (A-8)

As a result of the Appellant's failure to pay the outstanding secured property taxes, and by operation of law, in 1997, the subject properties, and two additional adjacent tax defaulted properties (Parcels 13 and 14), became subject to the power to sell by the Tax Collector. (*Section 3691.1*) The Tax Collector attempted to sell all four of the Appellant's tax defaulted properties by scheduling them to be sold at the 1998A Tax Auction. (A-8) On essentially the eve of that auction, the Tax Collector received a commitment for a loan which indicated that the defaulted taxes would be paid from the proceeds of a loan which was pending. (A-9) Although all four properties were removed from the 1998 tax sale to facilitate the receipt of that payment, the taxes were not paid by the Appellant or by any other party. Each of the Appellant's tax defaulted properties remained subject to power to sell.

In 2000, the Tax Collector again attempted to sell all four of Appellant's tax defaulted parcels. However, the Tax Collector detected an error in the Notices of Auction for Parcels 15 and 16, so the Tax Collector elected to remove those from the sale in 2000. (A-9) However, there were no errors in the Notices of Auction for Parcels 13 and 14 and those parcels were sold at the Tax Collector's 2000B tax auction. (A-9)

As for the August 2003 sale of Parcels 15 and 16 (which are the subjects of the instant case), it has been clearly shown by testimony and documentary evidence that: 1) the statutorily required Notices of Impending Power to Sell were timely mailed to the assessee of record and properly published; 2) the statutorily required Notices of Auction were timely sent to all parties of interest and Appellant acknowledges having actually received the Notice of Auction with respect to Parcel 15; 3) the Notice of Auction was properly published in accordance with the statutory requirements, and; 4) the property was not redeemed by the end of business on the last day before the tax sale. (A-18)

The two properties (parcels 15 and 16) were offered for sale at the 2003B tax auction, and were sold to Cooper. Cooper paid for the properties, the proceeds of the sale were applied to the tax default of the properties and tax deeds were properly issued to Cooper. (A-14)

Indyway brought suit against the County of Los Angeles and Dennis Cooper to quiet title and for

declaratory relief.

Based on the above, the Trial Court made the following findings of fact:

a.) With respect to the County's attempt to sell parcels 15 and 16 in 1998 and 2000:

1) Both Parcel 15 and Parcel 16 became tax defaulted for non-payment of secured property taxes on July 1, 1992 (C-4)[4];

2) A Notice of Impending Default was published in the Los Angeles Daily Journal on May 20, May 27, and June 2, 1992 (C-4);

3) A Delinquent List of defaulted properties reflecting Parcels 15 and 16 was published in the Long Beach Press-Telegram on August 27 and September 3, 1993 (C-4);

4) A Courtesy Notice was sent to Appellant on Parcels 15 and 16 (C-4);

5) A Notice of Power to Sell Tax-Defaulted Property was recorded for Parcel 15 as Los Angeles Document No. 97-1265654 on August 15, 1997 (C-4);

6) A Notice of Power to Sell Tax-Defaulted

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[4] References to the Trial Court decision incorporated in Petitioner's petition as Appendix C are prefaced by "C-page number".

Property was recorded for Parcel 16 as Los Angeles Document No. 97-1265655 on August 15, 1997 (C-5);

7) Both parcels were scheduled to be sold at the County's 1998A Tax Sale (C-5);

8) Both parcels were included in the auction notification process for the 1998A Tax Sale (C-5);

9) The Tax Collector received a letter from Frank Gabriel of Hudson Mortgage Bankers which provided that the defaulted taxes would be paid from the proceeds of a loan that was being processed (C-5);

10) The defaulted taxes were not paid, and Parcels 15 and 16 were removed from the 1998A Tax Sale, but remained subject to power to sell (C-5);

11) Parcels 15 and 16 were next prepared for sale for defaulted taxes for the 2000B Tax Sale(C-5);

12) Both parcels were included in the auction notification process for the 2000B Tax Sale (C-5);

13) In preparing the files for the 2000B Tax Sale, the Tax Collector determined that the notification process for Parcels 15 and 16 was not complete (C-5);

14) Parcels 15 and 16 were not offered for sale in the 2000B Tax Sale (C-6); and

15) The defaulted taxes were not paid, and the parcels remained subject to power to sell(C-6).

Further, the Court found:

1) The Recorded Notice of Power to Sell Tax Defaulted Property stays in effect until the taxes are paid and the property is redeemed (*Revenue and Taxation Code Section 4112*) (C-6); and

2) Including Parcels 15 and 16 in the auction notification process for the 1998A and 2000B Tax Sales constitutes an attempt to sell Parcels 15 and 16 in 1998 and 2000, in fulfillment of the requirements of *Revenue and Taxation Code Section 3692*. (C-6, C-7)

b.) With respect to notices of auction sent to all parties of interest pursuant to Revenue and Taxation Code Section 3701, the Court made the following findings of fact:

1) Parcel 15 and Parcel 16 were transferred to Indyway Investment by Rudy A. and Melissa P. Diaz on May 8, 1992 (C-7);

2) The deed referencing such transfer was recorded as Los Angeles Document No. 92-844769 on May 11, 1992, and instructs that when recorded, the document should be mailed to: Indyway Investment c/o P.O. Box 832, N. Hollywood, California, D.D.M. 122.32 Zip Exempt (C-7);

3) The Notice of Auction needed to be mailed to parties of interest as defined in *Revenue and Taxation Code Section 4675* (C-7);

4) For the 2003B Tax Sale, the County ordered a Parties of Interest Report from M.F.I. Title Company for Parcels 15 and 16 to determine parties of interest to mail the Notice of Auction to (C-7, C-8);

5) A Parties of Interest Report is a report that shows which parties of interest should receive a Notice of Auction as defined in *Revenue and Taxation Code Section 4675* (RT-2162:20-24);

6) For the 2003B Tax Sale, the Notice of Auction for Parcel 15 and Parcel 16 was mailed to P.O. Box 832, North Hollywood, CA 91607 (C-8);

7) For the 2003B Tax Sale, the Notice of Auction for Parcel 15 was mailed to the situs address, 2034 West 15th Street, Long Beach, CA 90813-1004 (C-8);

8) For the 2003B Tax Sale, the Notice of Auction for Parcel 16 was mailed to the situs address, 2030 West 15th Street, Long Beach, CA 90813-1004 (C-8);

9) The Tax Collector established and followed a reasonable procedure to notify parties of interest (C-9);

10) Indyway Investment did not change its official mailing address with the County Assessor from P.O. Box 832, North Hollywood, CA 91607 to P.O. Box 6052, Long Beach, CA 90806 (C-9); and

11) The only addresses that the Tax Collector was required to send were to the official mailing address with the County Assessor (P.O. Box 832,

North Hollywood, CA 91607) and the situs address (C-9).

The Court further found that the Tax Collector fulfilled the requirements of *Revenue and Taxation Code Section 3701*, and was successful in that Appellant received actual notice of the 2003B Tax Sale (C-10).

c.) With respect to Indyway's receipt of notice of the 2003B tax sale for parcels 15 and 16, the Court based its decision on the following facts:

1) Kedar Cohen testified that he was Successor Trustee of the Indyway Trust (C-10);

2) Mr. Cohen testified that Indyway treated all parcels, including Parcels 13, 14, 15, and 16, as one parcel (C-10);

3) Mr. Cohen testified that he received the Notice of Auction from a tenant at 2725 Baltic Avenue, Long Beach (C-10);

4) In a letter dated July 8, 2003 from Mr. Cohen to Mark J. Saladino, Los Angeles County Treasurer and Tax Collector, Mr. Cohen states that he received the Notice of Auction for Parcel 15 and Mr. Cohen testified that his signature is on the letter (C-10, C-11);

5) Mr. Cohen testified that he prepared the letter and that it was sent by Frank Hernandez (C-

11);

6) In the letter, Mr. Cohen threatens to sue the County if it proceeds with the tax sale, and specifically references Parcel 15 and Parcel 16 (C-11).

The trial court further found that the County complied with the requirement to provide Indyway with notice of the tax sale for parcels 15 and 16 for the 2003B tax sale and specifically found that the Tax Collector was required to send a Notice of Auction to the last known mailing address of parties of interest pursuant to *Revenue and Taxation Code Section 3701* and did, and that Indyway acknowledged that it received actual notice of the Notice of Auction. (C-11, A-12). After eight years of non-payment of property taxes, the County notified Indyway, both in writing and orally, that the property would be sold at auction in June 2000. (A-8) Indyway acknowledged in writing that it received the County's notices. (A-12). Still, Indyway did not pay the taxes. Consequently, the property was sold at auction to Dennis Cooper on August 11, 2003 (A-14).

Significantly, Indyway did not raise the three statutes upon which it bases its petition as issues at trial. The trial court thereupon issued a statement of decision, making findings of fact, conclusions of law, and a decision — all in favor of Cooper and the County of Los Angeles. The trial court found that Indyway did not prove that it could have set aside the County's sale.

Indyway appealed. Indyway never raised any

conflicts within the three Revenue and Tax Code sections as issues in its AOB. As a result, the Court of Appeal — in its *unpublished opinion* — did not issue any ruling on conflicts among these statutes.

III.

REASONS FOR DENYING INDYWAY'S PETITION.

A. Indyway Never Raised the Conflicts Between the Three Statutes as Issues at Trial and the Court of Appeal's Opinion Does Not Adjudicate Any Issues about Conflicts of Those Statutes.

> "A petition for writ of certiorari will be granted only for compelling reasons." *Supreme Court Rule 10.*

This Court's review lies from the Court of Appeal's decision. *Supreme Court Rule 10(c).* As the Court of Appeal has not issued a decision based on any conflict of the three statutes set forth in Indyway's petition, there is nothing for this Court to review. It is axiomatic that "'[w]here issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them.'" *Pennsylvania Dept. of Corrections,* 524 U.S. 206 at pp. 212-213 quoting *Adickes,* 398 U.S. at p. 147, n. 2.

B. As the Court of Appeal Never Decided a Federal Question Regarding Due Process As it Pertains to The Revenue and Tax Code Conflicts, There Is No Ground For Review.

Second, Indyway never identifies any ground for review under Supreme Court Rule 10(c), e.g., a state court has decided an important federal question in a way that conflicts with a decision of another state court or a United States court of appeals, a state court has decided an important question of federal law that has not been but should be settled by this court, or a state court has decided an important federal question in a way that conflicts with a decision by this court. Here, as the Court of Appeal's decision involved none of the above regarding a federal question, there is no ground for this Court's review. Consequently, review by this court is neither appropriate nor warranted.

Even if a California Court had addressed the merits of Indyway's new argument or if this Court were to do so, the three statutes operate harmoniously and provide all required due process protections. Thus, the three statutes do not violate the Fifth and Fourteenth Amendments.

C. The Unequivocal Language of Section 3691.1 Was Followed by the County's Recordation of Notice of Power to Sell Real Property; There Is No Conflict among Sections 3711 and 3691.1 and They Do Not Violate Due Process of Law.

Indyway's first issue claims that section 3691.1 is ambiguous as to whether it requires the County to record a notice of power to sell *each* time a property comes up for a tax sale and thus, section 3711 should not be permitted to find the sale valid if the County did not issue more than one notice of Power To Sell. Indyway's petition, p. 20. Indyway bases this claim on its assertion that the County "executive deleted" the original notice of Power to sell. Id at p. 23.

Preliminarily, Indyway never argued in the Court of Appeal that the County "executive deleted" the original notice of power to sell real property. Thus, there is no foundation for this argument.

Second, section 3691.1 states that "[t]he tax collector shall execute a notice whenever a parcel becomes subject to the power set forth in section 3691 on a form prescribed by the Controller. The county clerk shall take acknowledgment of the notice without charge." The County followed this clear language — it recorded a notice of power to sell the relevant property. Indyway's argument that the County should be required to record subsequent notices has no support in section the 3691.1. Further, Indyway's

argument does not make sense — the notice is on record; there is no reason or purpose to record subsequent notices.

Contrary to Indyway's erroneous contention, *section 3711* does not compete with *section 3691.1.* Section 3711 merely states that:

> "Except as against actual fraud, the deed duly acknowledged or proved is conclusive evidence of the regularity of all proceedings from the assessment of the assessor to the execution of the deed, both inclusive."

As these statutes facially demonstrate, there is nothing ambiguous about them. They are clear and straightforward. They do not conflict or compete with each other. They do not take property away from an owner without affording due process (notice of sale and an opportunity to be heard — by paying the delinquent taxes before the sale). Indyway had both actual notice (written and oral) of the auction and an opportunity to pay the delinquent taxes to avoid losing its property at auction; as a tax evader, it decided not to pay the taxes and subsequently, lost its property when it was sold to Cooper at the County's auction. Indyway has not presented any cogent argument as to how these statutes supposedly deprived them or deprive any California property owner of their due process rights.

D. The County Did Not Rescind the Original Notice of Power to Sell the Real Property and Indyway Did Not Redeem the Property; Thus, Destroying the Foundation of Indyway's Purported Second Issue.

Indyway's second issue centers on its claim that the County rescinded the original notice of power to sell the real property and that it redeemed the property pursuant to *section 4112* and thus, that the sale should not be valid under *section 3711.* (Indyway's petition, p. i.)

Section 3711 shows that the deed to Cooper "is, in the absence of actual fraud, conclusively presumed regular in all respects when the deed to the purchaser at the public auction has been issued." *Herrington v. Weigel,* 82 Cal.App.3d 676,683 (1978).

Section 4112 concerns fees for redeeming property "prior to the proposed sale" and that such redemption would nullify the notice of the sale.

The substantial evidence found by the trial court, and affirmed on appeal, thoroughly undermines Indyway's claim that the issuance of a Certificate of Redemption should have cancelled the sale. Substantial evidence showed that the post-auction Rescission did not invalidate the sale and simply meant the delinquent taxes were paid with auction proceeds. The Rescission cancelled the tax lien, but did not affect or cancel the sale.

Second, substantial evidence shows the Certificate of Redemption resulted from payment of the back taxes from the auction proceeds and did not mean Indyway redeemed the property. The trial court gave no deference that the delinquent taxes were paid by an anonymous third party as claimed by Indyway. Accordingly, the County testified that Indyway's argument that Indyway redeemed the property is without merit.

Third, substantial evidence shows that bona fide purchaser Cooper — who did not have any prior dealings with Indyway — did not purchase or redeem the property for Indyway.

Fourth, the Rescission was recorded after the August 11, 2003 auction. "The right of redemption terminates at the close of business on the last business day prior to the date of the sale." Section 3707. That is because the property owner must pay the delinquent taxes the business day before the auction to stop the auction. Thus, the post-August 11, 2003 recorded Rescission and Cancellation thereof could not possibly support Indyway's argument that it redeemed the property (which can only occur pre-auction) or that it was deprived of due process of law.

Thus, the substantial evidence showed that the County's post-auction Rescission did not affect the sale, much less nullify the original notice of power to sell recorded years earlier. There is no issue, ambiguity, or conflict among sections 3711 or 4112, much less when applied to the facts here. Again, Indyway has not presented any valid argument that

these statutes somehow, when applied, take away property without due process of law. The substantial evidence elicited at trial and as noted by the Court of Appeal conclusively established that Indyway had actual notice (written and oral) of the County's auction of the property and lost the property via the auction sale because Indyway failed and refused to pay property taxes.

E. The Trial and Appellate Court's Findings That the Subject Properties Were Never Removed From The Tax Auction Such That Any Due Process or Constitutional Notice Violation Was Created Were Proper.

In its Statement of Decisions, the trial court specifically found that the subject properties were never removed from the public auction process (C-11). That finding was based on testimony from County's employees Sharon Perkins and Martha Duran, as well as testimony from an expert witness, Steven Hourigan (C-12).

"Removal" of a property from the public auction process is a term of art, so to speak, and is governed by *Revenue and Taxation Code section 3698.8.* No evidence has ever been offered to support that the properties were removed from the sale. Further, the appellate court noted, at footnote 13 in its opinion, that the temporary designation of the properties for the possible consideration of their sale to a

governmental entity, which was for a period of less than three hours and internal to the tax collector's office and not in any way disclosed to the public, did not rise to the level of any type of a constitutional violation (A-23).

F. Indyway Cannot Allege Any Defects Which Are Not Cured by the Issuance of The Duly Acknowledged Tax Deed Pursuant to Revenue and Taxation Code Section 3711.

The issuance of a duly acknowledged tax deed is conclusive evidence of the regularity of the tax auction proceedings, absent evidence of fraud or lack of an indispensable constitutional step. (*Revenue and Taxation Code section 3711*; *Chesney v. Gresham* (1976) 64 Cal.App.3d 120, 127.) In other words, the tax deed cannot cure a defect jurisdictional in nature, but it can cure non-jurisdictional defects. (*Ibid.*)

Several cases have established what constitutes a jurisdictional defects. The most clear definition is contained in *Miller v. McKenna* (1944) 23 Cal.2d 774, 782, wherein, while addressing the effectiveness of the curative provisions resulting from the issuance of a tax deed, the court stated:

> "Among the jurisdictional requisites are (a) a duly constituted taxing authority; (b) property to be taxed within the territorial jurisdiction of the taxing body; (c) property or subject matter legally subject to the tax;

> and (d) sufficient notice and opportunity for hearing to constitute compliance with due process."[5]

Clearly, Indyway does not allege any defects that correspond to the first three jurisdictional requisites defined by the *Miller* court, above. Thus, in accordance with *Revenue and Taxation Code section 3711*, all defects alleged by Indyway are cured by the issuance of the tax deed, other than its one remaining alleged "jurisdictional" defect: that the County failed to provide it with adequate notice of the impending tax sale of the properties at issue, which allegations were disproved at trial.[6]

Although Indyway alleges lack of notice, the County contends that due process was fully satisfied by County's compliance with statutory and constitutional notice requirements. Such compliance is evidenced by Indyway's acknowledgment that it received notice of the tax sale. Thus, Indyway cannot

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[5] *[See, also, McMaster v. City of Santa Rosa* (1972) 27 Cal.App.3d 598, 603; *Security Investment Company of Riverside v. Douglas* (1946) 76 Cal.App.2d 592, 596.]

[6] Indyway makes repeated statements and allegations in its briefs that mirror the statements and arguments it made at trial, which the trial court determined were lacking in credibility. An appellate court does not reassess the credibility of witnesses or reweigh the evidence. (*In re S.C.* (2006) 138 Cal.App.4th 396, citing *People v. McCleod* (1997) 55 Cal.App.4th 1205, 1221.)

show any jurisdictional defects as to any aspect of the tax sale of properties. Based upon the evidence presented at trial and the arguments presented to the appellate court, both courts agreed with the County's contention.

"The fundamental requisite of due process of law is the opportunity to be heard." (*Mullane v. Central Hanover Bank and Trust Co.* (1950) 339 U.S. 306, 314.) If a person has actual knowledge of the pending matter, then there is no question that person had opportunity to be heard, to post objections, to pay its back taxes or to pursue any other legally available remedy.[7]

It is clear that Indyway was afforded its due process rights in this matter. Therefore, any allegations regarding notice does not rise to constitutional injury, thus the tax deed is evidence of

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[7] Indyway's allegations that the County made a change in the designation of intended sale of its properties from a public auction sale ("Chapter 7 sale") to a private agreement type of sale ("Chapter 8 sale") and that the change somehow harmed Indyway, is irrelevant. First, such a change in designation is not a jurisdictional defect. Second, the evidence demonstrated, and the trial court agreed, that the properties were never "removed" from the auction process. Lastly, Indyway has no support in the law for its argument that any alleged change to a Chapter 8 sale terminated all of County's notices because, even if moved, the properties remained under the County's power to sell. The designation only alters who may buy property, not whether it would be sold.

the regularity of all proceedings in regards to the sale of these two parcels.

G. There is No Conflict or Ambiguity in the Language of Revenue and Taxation Code Sections 3691 and 3691.1.

Indyway's contention that the County was required to issue and record a new notice of power to sell is simply not meritorious. As noted by the appellate court's opinion in footnote 14, the statues are self-explanatory. Revenue and Taxation Code section 3691.1 requires the issuance and recording of a notice when a property becomes subject to the tax collector's power of sale in accordance with Revenue and taxation Code section 3691. Section 3691 sets forth when a property becomes subject to the power of sale as result of the unpaid taxes. The property remains subject to the power of sale as result of the unpaid taxes. The property remains subject to the power of sale until it is redeemed or sold. Section 3691.1 does not require that a new notice of power to sell be issued or recorded whenever a parcel is to be *offered* for sale. The purpose of recording the notice of the tax collector's power to sell the property is to provide notice to the world that the statuary lien on the property for the unpaid taxes is ripe to be enforced through the sale of the property.

There is simply no requirement, that the notice of the power of sale needs to be issued or recorded more than once.

H. The Tax-Defaulted Status of the Subject Properties Was Cured By Cooper's Purchase, Not By Any Pre-Auction Redemption.

Simply put, there was ample evidence provided to the trial court that the subject parcels were not redeemed by Indyway or any other party prior to the tax auction sale in August 2003.[8] The outstanding, defaulted taxes were cured by the application of the sale proceeds provided by Cooper as a result of his auction purchase of the property.

Revenue and Taxation Code section 3698.5 sets forth the method for establishing the minimum bid of a parcel in a tax auction. That section requires that the minimum bid be set at an amount not less than total amount necessary to redeem the property, plus costs. Section 3698.5 specifically outlines the amounts to be included and references the costs set as forth in Section 4112. Clearly, the intent is to read these statues together in a manner that results in a County's recovery of all outstanding taxes, penalties

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[8] In fact, in its opinion, the appellate courts specifically noted that a certificate of redemption, such as the one referenced by Indyway, may be obtained by any party wishing to obtain proof of the payment of taxes on a parcel and does not indicate the identity of the taxpayer. The court also noted that the trial court testimony of Indyway's trustee, Keder Cohen, regarding the alleged pre-sale redemption of the property was a blatant fabrication on a material point.

and costs in connection with its efforts to collect delinquent taxes.

Indyway's contention that these statues are somehow in conflict is, once again, manufactured and based on a recitation of facts that only it considers true, together with a misapplication of a clear and unambiguous law.

V.

CONCLUSION.

As Indyway never raised conflicts among sections 3711, 3601.1 or 4112 in the courts below, there is nothing for this Court to review. Indyway has not offered a single, valid reason why review of the Court of Appeal's unpublished opinion should be granted. In any event, the statutes are unequivocally not in conflict with each other or other parts of the of the Revenue and Taxation Code governing property tax sales, and application of them does not violate the Fifth and Fourteenth Amendments. Indyway had actual notice of the County's auction of the property because Indyway failed to pay property taxes; nonetheless, Indyway still refused to pay the taxes to avoid losing the property at the County's auction. Therefore, Respondent, Dennis Cooper, respectfully requests that the petition for writ of certiorari be denied.

Respectively submitted,

DATED: October 24, 2008.

Law Office of
R.M. Anthony Cosio

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Counsel of Record

Attorney for Respondent
Dennis Cooper

Supreme Court, U.S.
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No. 08-392

IN THE

Supreme Court of the United States

INDYWAY INVESTMENT,
Petitioner,

vs.

DENNIS COOPER and
COUNTY OF LOS ANGELES,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEALS
SECOND APPELLATE DISTRICT, DIVISION THREE

PETITIONER'S REPLY BRIEF

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iv

INTRODUCTION 1

I. THE LOWER COURTS HAD DECIDED ON AN IMPORTANT FEDERAL QUESTION THAT WARRANTS THIS COURT'S JURISDICTION 2

II. THERE EXIST A REAL DISPARITY AND CONFLICTS BETWEEN THE INTERPRETATIONS OF THE REVENUE AND TAXATION CODES MERITING THIS COURT'S REVIEW 4

A. There Exist a Disparity and Conflict Between the Interpretations of Section 3691.1 4

B. There Exist a Disparity and Conflict Between the Interpretations of the Original Certificates of Redemption Issued In Indyway's Name 7

C. There Exist a Disparity and Conflict Between the Interpretations of Section 4112 9

Page

D. The Court of Appeal Raised Section 3711 That Conflicts With the Other Statutes – Not Indyway 10

E. Does A Change In Designation, Irrespective of the Length of the Change, Legally Affects the Constitutionally Protected Rights of the Property Owners Once Notice of Public Auction Has Been Published and Served? 11

III. RESPONDENT ABUSES THE LEGAL PROCESS BY KNOWINGLY AND WILLFULLY FALSIFYING MATERIAL FACTS BY FABRICATING FRAUDULENT STATEMENTS IN HIS OPPOSITION IN ATTEMPT TO AFFECT THE MANNER IN WHICH THE DECISION TO REVIEW INDYWAY'S PETITION IS TAKEN, WHICH CAN BE CHARACTERIZED AS EXTRINSIC FRAUD COMMITTED AGAINST INDYWAY 12

A. Respondent Fraudulently Fabricates the Statement That the County Recorded Rescission 13

Page

B. Respondent Fraudulently Fabricates the Statement That the County Recorded a Cancellation of Rescission 13

C. Respondent's Labeling of Indyway As a Tax Evader is An Attempt to Assassinate the Integrity of Indyway to This Court 14

IV. GRANTING REVIEW OF INDYWAY'S PETITION IS NECESSARY BECAUSE THIS CASE IS FOR PROTECTION OF CONSTITUTIONAL RIGHTS 14

CONCLUSION 15

APPENDIX

California Revenue and Taxation Code (Relevant Sections) A-1

TABLE OF AUTHORITIES

Page

Cases

Brinkerhoff-Faris Trust Co. v. Hill (1930)
280 U.S. 604 1

Craland, Inc. v. State of California (1989)
214 Cal.App.3d 1400, 263 Cal.Rptr. 255 .. 15

Di Maio v. Reid,
132 N.J.L. 17, 37 A.2d 829 2

Farley v. Davis,
10 Wash 2d 62, 116 P2d 263,
155 ALR 1302 12

Flood v. Templeton,
152 Cal 148, 92 P 78 13

Hickman v. Taylor (1947)
327 U.S. 808, 328 U.S. 876,
329 U.S. 495 1

Nebbia v. People of State of New York, N. Y. (1934)
291 U.S. 502, 54 S.Ct. 505,
78 L.Ed. 940 2

North American Co. v. Securities & Exchange Commission,
C.C.A.2, 133 F.2d 148 2

Page

Paul v. Los Angeles County Flood Control Dist. (1974) 37 Cal.App.3d 265, 112 Cal.Rptr. 274 15

Philbrick v. Huff (1976) 60 Cal.App.3d 633, 131 Cal.Rptr. 733 15

Potter v. County of Los Angeles (1967) 251 Cal.App.2d 280 8

Quelimane Co. v. Stewart Title Guaranty Co. (1998) 19 Cal.4th 26 77 Cal.Rptr.2d 709, 960 P.2d 513 15

Spencer v. Harmon Enterprises, Inc. (1965) 234 Cal.App.2d 614 7

Statutes

California Revenue and Taxation Code
section 3691.1 ..... 3-6, 15
section 3711 ..... 4, 10
section 4105.2 7
section 4112 ..... 7, 9, 10
section 4112(c) 3, 9, 10

Constitution

United States Constitution
Fifth Amendment 1, 16
Fourteenth Amendment 1, 16

Page

Other Authorities

5 Miller & Starr, Cal. Real Estate (3d ed. 2005) section 11:148 15

30A Am J Rev Ed Judgm § 657 12

INTRODUCTION

It should be noted that on October 15, 2008, Respondent County of Los Angeles ("the County") filed a waiver of right to respond.

Petitioner respectfully submits that the instant case offers extraordinary circumstances of the taxing authorities' abuse of the public auction process that deprives any person of life, liberty, or property, without due process of law as preserved under the Fifth and Fourteenth Amendments as well as other constitutional protection as envisioned by the framers of the United States Constitution.

This reply is intended to clarify arguments advanced in original petition for writ of certiorari. *Hickman v. Taylor*, 327 U.S. 808, 328 U.S. 876, 329 U.S. 495; *Brinkerhoff-Faris Trust Co. v. Hill*, 280 U.S. 604, 550, 281.1.

Dennis Cooper ("Respondent") seeks to find fault with Indyway Investment's ("Petitioner") lack of prosecution and jurisdictional matters. This is a mere attempt to cloud the interpretations of the California Revenue and Taxation Codes and its importance to the constitutionality issues of these statutes which Petitioner seeks to clarify below.

The consequences of the County's abuses against due process of law are to a degree of severity that justify granting the current petition. The trial court disregarded Indyway's arguments.

The Court of Appeal's prejudicial decision that many of Indyway's challenges to the County's lack of compliance with statutory prerequisites are simply not cognizable.

The current petition asks this Court to align the essential elements of due process of law, specifically the constitutional guaranty demanding only that the law shall be reasonable, and not arbitrary or capricious, and that the means selected shall have real substantial relation to object. *Nebbia v. People of State of New York, N. Y.*, 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940; *North American Co. v. Securities & Exchange Commission*, (1943) C.C.A.2, 133 F.2d 148, 154. And the opportunity to be heard and to defend in orderly proceeding and the guarantee of due process of law requires that every man have protection of day in court and benefit of general law. *Di Maio v. Reid* (1944) 132 N.J.L. 17, 37 A.2d 829, 830.

I. THE LOWER COURTS HAD DECIDED ON AN IMPORTANT FEDERAL QUESTION THAT WARRANTS THIS COURT'S JURISDICTION

The underlying issue herein under review addresses the due process of law that must be accorded to a citizen before the government can exercise the privileged power of taking and selling of his property.

Respondent challenged jurisdiction on the grounds that Indyway failed to identify basis for review under Supreme Court Rule 10(c) and the

Court of Appeal never decided an important federal question. However, the trial court made the following finding of facts in its Statement of Decision which were also affirmed by the Court of Appeal.

The Statement of Decision, Number 1 states, ". . . The properties were not redeemed . . ." C-3.[1] It is *Revenue and Taxation Code*[2] *section 4112(c)* that governs the Redeeming provisions – not the lower courts.

Number 1 then states, "- 5) The Recorded Notice of Power to Sell Tax Defaulted Property stays in effect until the taxes are paid and the property redeemed." C-6. Here again the lower court rendered a decision while ignoring the governing statute for the Recorded Notice provision which is *section 3691.1.*

The trial court findings did not reference Indyway's challenge to *sections 3691.1 and 4112(c).* However, as set forth in Indyway's Court of Appeal Opening and Reply Brief, the arguments of the Recorded Notice and Redemption issues were raised and supported by exhibits admitted and

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[1] Citation styled "C_" refer to the appendices to Indyway's Petition for Writ of Certiorari. Citation styled "RT" or "EX" refer to the California appellate record, i.e., reporter's transcript and trial exhibits lodged with that record.

[2] Unless otherwise indicated, all code section references in this reply brief are to *California's Revenue and Taxation Code.*

received into evidence to the trial court; it was the trial court that disregarded the arguments. Additionally, the Court of Appeal dismissed Indyway's argument to these code sections because it held that Indyway was barred by the conclusive effect given to the tax deeds by the express language of *section 3711.*

II. THERE EXIST A REAL DISPARITY AND CONFLICTS BETWEEN THE INTERPRETATIONS OF THE REVENUE AND TAXATION CODES MERITING THIS COURT'S REVIEW

In Petitioner's other case filed with this Court having Docket No. 07-1479, the County **did record a Rescission** for the Properties.

However, in the instant case, the County **did not record a Rescission** for the Properties.

Herein lie the inconsistencies and contradictions in the application of the statutes.

A. There Exist a Disparity and Conflict Between the Interpretations of Section 3691.1

Section 3691.1 provides:

> *"The tax collector shall execute* ***a notice whenever*** *a parcel becomes subject to the power of sale."*

Petitioner contends that every time a property is placed in a state-assigned auction, a notice must be executed and recorded as set forth in *section 3691.1* that states, a notice shall be executed "**whenever**" the property becomes subject to the power of sale. If a tax defaulted property was schedule for state-assigned auction for a particular year but was removed, a new notice must be executed and recorded when it is rescheduled again.

Petitioner contends that the County failed to execute and record a new Notice of Power to Sell Tax-Defaulted Property ("Recorded Notice") for the 2003B Auction which was the third attempt to sell the Properties.

Respondents' contention is that the Recorded Notice stays in effect until the taxes are paid and the property redeemed. Respondents and the lower courts apparently interpret the term "whenever" to mean as only once, after the 5-year tax default occurs.

This Recorded Notice is a statutory prerequisite to the County's right to publish and place a tax-defaulted property in a state tax auction. All the pertinent information, including but not limited to the state-assigned items numbers, which are used to identify the state-assigned auction sale and auction year that the tax-defaulted property are placed in. This follows the **constitutional due process requirements** and allows the property owner to accurately and timely oppose or challenge the auction.

In the instant case, the County used "5634" and "5635" as the item numbers for parcels #15 and #16 respectively on every internal and external documentation leading up to and after the purported tax sale of the Properties at the 2003B Auction. [Exhibits 26, 39, 78, 79, 101, 102, 117, 120, 128, 132, 149, 168].

However, the item numbers for parcels #15 and #16 on the Recorded Notices is "18762" and "18763" respectively. [EX 116]. These latter item numbers were based on the item numbers selected for the **1998A Auction, *only***, as evident on the computer screen details titled "Subject to Power to Sell (STPTS)." [EX 78, 79]. Therefore, the County's "item numbers" used on different County documents for parcels #15 and #16 for the 2003B Auction **did not match** the "item numbers" identified on the Recorded Notices.

Moreover, the County cancelled the original and *only* notices of power to sale tax-defaulted property on February 3, 2000 by way of "**EXECUTIVE DELETE**." The cancellation of the notices were apparent as the Properties were again scheduled for tax sale in the 2000B Auction Sale of June 26, 2000, but were removed from that tax sale by the County due to "BAD NOTICE." Therefore, making it mandatory that a new Recorded Notice be executed pursuant to *section 3691.1.*

B. There Exist a Disparity and Conflict Between the Interpretations of the Original Certificates of Redemption Issued In Indyway's Name

Petitioner contends that the real properties were **REDEEMED** back to Petitioner by virtue of the County executing and issuing *original* **Certificates of Redemption** assessed to INDYWAY INVESTMENT.

The Respondents' contention is that "the Certificate of Redemption resulted from payment of the back taxes from the auction proceeds and did not mean Indyway redeemed the property."

Petitioner's *right of redemption* was preserved because the original and *only* Recorded Notice was invalid, as it had been executed and recorded for the 1998A Auction – **ONLY**. Therefore, Petitioner argues that there is no limitation as to who may pay the taxes on the real properties and that the County had accepted the payment of taxes from a volunteer. Petitioner contends that *sections 4105.2 and 4112* that governs the Certificates of Redemption **REDEEMED** the real properties back to Petitioner because the volunteer acquires no right whatsoever or no color of title by the payment of taxes on the land of another (*Spencer v. Harmon Enterprises, Inc.*, (1965) 234 Cal. App. 2d 614). Furthermore, Petitioner contends that the redemption by payment of delinquent taxes did not affect a transfer of title to person who paid taxes where he had no title before

in the property **redeemed**. *Potter v. County of Los Angeles,* (1967) 251 Cal.App.2d 280.

At trial, the County defines what a **Certificate of Redemption** is by reading the 5th paragraph on the back of the Certificate of Redemption on the record that states, *"A Certificate of Redemption is a statement certifying that all delinquent prior taxes have been* **redeemed**." [6RT 1298:9-28, 1299:1-14] [EX 113].

Also at trial, the County testified that the letter "**R**" at the 1998A, the 2000B, and the 2003B Sale for parcels 15 and 16 of the County's internal documentation called Secured Defaulted Tax Roll System, Subject to Power to Sell (STPTS) Screen, means the Properties were "**REDEEMED**." [6RT 1227:19-28, 1228:1-28, 1229:1] [EX 78, EX 79].

Furthermore at trial, the County testified that their internal documentation called STPTS – Party of Interest, which were certified by a County employee, shows the status "**REDEEMED**" and assessed the owner to be "**INDYWAY INVESTMENT.**" [6RT 1212:5-19] [EX 27].

At trial, the County testified that their other internal documentation called STPTS – Detail, which were also certified by a County employee, shows the Properties owner to be "**INDYWAY INVESTMENT**" for the 2003B Sale. [6RT 1213:6-28, 1214:1-6] [EX 28].

Moreover, on page iv under the "TITLE" subject of the 2003B Auction Book states in BOLD

and UPPERCASE that **"THE REDEMPTION OF A PARCEL WILL PRECLUDE ANY TRANSFER OF OWNERSHIP. THE OWNER OF RECORD RETAINS TITLE TO ANY REDEEMED PARCEL."** [EX 168].

C. There Exist a Disparity and Conflict Between the Interpretations of Section 4112

Section 4112 provides in pertinent part:

> *"(c) When tax-defaulted property subject to the notice recorded under Section 3691.4 is redeemed, the notice becomes null and void and the tax collector shall execute and record with the county recorder a rescission of the notice."*

Petitioner maintains that the County issued *original* Certificates of Redemption dated August 11, 2003 in Petitioner's name because all delinquent prior taxes have been **redeemed**, but the County has yet to execute and record a Rescission of the Notice as required under *section 4112(c).*

The Respondents' contention is that "the recorded Notice of Power to Sell Tax-Defaulted Property stays in effect until the taxes are paid pursuant to *Revenue and Taxation Code section 4112*" and "if the property is sold at auction, the proceeds of the sale are applied to redeem the tax default."

The Respondents' contention is patently unsound. Separate statutes govern a state tax sale of a tax-defaulted property and its *opposition* which is the redemption of a tax-defaulted property. *Section 4112* deals solely with the **redemption** of a tax-defaulted property and states nothing in regards to the purchasing of a tax-defaulted property at a state tax auction. Under *section 4112(c)*, the **redemption** of a tax-defaulted property **merely terminates** the state's power to sell a tax-defaulted property. The Respondents rely upon *section 4112* as support for its contention; however, the reading of this statute reveals no basis for such reliance.

D. The Court of Appeal Raised Section 3711 That Conflicts With the Other Statutes – Not Indyway

Contrary to Respondent's statement that Indyway never raised the conflicts between the statutes, it was the Court of Appeal that concluded that many of Indyway's challenges to the County's perceived lack of compliance with statutory prerequisites are simply not cognizable, due to the conclusive effect that must be given to the tax deeds by the express language of *section 3711.*

E. Does A Change In Designation, Irrespective of the Length of the Change, Legally Affects the Constitutionally Protected Rights of the Property Owners Once Notice of Public Auction Has Been Published and Served?

This case also presents an issue that has not been addressed by previous California statutes or California case law. This Court must determine to what extent can the County disregard statutory requirements of the *Revenue and Taxation Code* regarding public auction sales and unilaterally and arbitrarily move tax-defaulted properties between tax sales without affecting the constitutionally protected rights of the property owners.

Here, the County without statutory or case law authority changed the designation of Indyway's parcels after publication of notice of public auction had occurred. This Court must determine whether any such change in designation, irrespective of the length of the change, legally affects the constitutionally protected rights of the property owners once notice of public auction has been published and served.

III. RESPONDENT ABUSES THE LEGAL PROCESS BY KNOWINGLY AND WILLFULLY FALSIFYING MATERIAL FACTS BY FABRICATING FRAUDULENT STATEMENTS IN HIS OPPOSITION IN ATTEMPT TO AFFECT THE MANNER IN WHICH THE DECISION TO REVIEW INDYWAY'S PETITION IS TAKEN, WHICH CAN BE CHARACTERIZED AS EXTRINSIC FRAUD COMMITTED AGAINST INDYWAY

Respondent abuses the legal process by knowingly and willfully falsifying material facts by fraudulently stating that Indyway's instant case mirrors its earlier Petition for Writ of Certiorari. **Respondent's attempt to fraudulently manipulate this Court can be characterized as Extrinsic Fraud committed against Indyway.** The character of fraud which will afford a ground for setting aside a judgment, that is, fraud which is collateral to the issues tried in the case wherein the judgment was rendered. 30A Am J Rev Ed Judgm § 657. For the purpose of a ground of equitable relief against a judgment, fraud which has prevented a party from having a trial, from presenting all his case to the court, or has so affected the manner in which the judgment was taken that there has not been a fair submission of the controversy to the court. *Farley v. Davis* (1941) 10 Wash 2d 62, 116 P2d 263, 155 ALR 1302. Actual fraud characterized by an evil intent to take advantage of another person for the purpose of

actually and knowingly defrauding him. *Flood v. Templeton* (1907) 152 Cal 148, 92 P 78.

Respondent's strategy deliberately abuses the legal process by resorting to a plea that this Court rely on the same rationale in denying Indyway's previous petition by misleading this Court with fraudulent statements. Respondent's opposition requests a denial of the current petition because there is no justification for review of Indyway's current petition.

A. Respondent Fraudulently Fabricates the Statement That the County Recorded Rescission

In Respondent's Opposition Brief, on pages 20 to 23, Respondent knowingly and willfully falsified material facts by fraudulently stating that the County recorded a Rescission. Respondent's statement is deliberately misplaced because **the County did not record a Rescission**, post-auction or otherwise, for the Properties in the instant case.

B. Respondent Fraudulently Fabricates the Statement That the County Recorded a Cancellation of Rescission

In Respondent's Opposition Brief, on pages 20 to 23, Respondent knowingly and willfully falsified material facts by fraudulently stating that the County recorded a Cancellation of Rescission. Respondent's statement is deliberately misplaced

because **the County did not record a Cancellation of Rescission**, post-auction or otherwise, for the Properties in the instant case.

C. Respondent's Labeling of Indyway As a Tax Evader is An Attempt to Assassinate the Integrity of Indyway to This Court

Contrary to Respondent's opinion that Indyway was created to evade taxes, Indyway owned a fifth property having Assessor Parcel Number 7313-021-016 that is also named on Indyway's deed recorded on May 11, 1992 which was never in arrears with property taxes. Indyway requests that this Court disregards such references and determine the legal issues presented here without consideration of these prejudicial statements made by Respondent.

IV. GRANTING REVIEW OF INDYWAY'S PETITION IS NECESSARY BECAUSE THIS CASE IS FOR PROTECTION OF CONSTITUTIONAL RIGHTS

This case presents an extraordinary and intriguing platform for this Court to erect a bridge between separate and unequal conflicts of the applications of statutes that govern a State's privileged power of taking and selling of a citizen's property to prevent the abusive consequences of due process of law violations. Such a bridge is necessary for the protection of federal constitutional rights.

Respondent attempts to create confusion by fraudulently fabricating the facts of the case. But there is no doubt about the holdings above and the issues presented here: a tax sale proceeding is wholly a creature of statute. *Craland, Inc. v. State of California,* (1989) 214 Cal.App.3d 1400, 1403, 263 Cal.Rptr. 255; *Quelimane Co. v. Stewart Title Guaranty Co.,* (1998) 19 Cal.4th 26, 40, 77 Cal.Rptr.2d 709, 960 P.2d 513.

The presumption of regularity under *section 3711* is rebuttable as to the jurisdictional issue of compliance with due process of law. *Philbrick v. Huff,* (1976) 60 Cal.App.3d 633, 648-649, 131 Cal.Rptr. 733; 5 Miller & Starr, Cal. Real Estate (3d ed. 2005) section 11:148, pp. 389-390. Here, Petitioner challenged the County's failure to comply with the procedures under *sections 3691.1,* et seq.

Because a tax sale is imposed against an adverse party without consent, "every essential step leading to the execution of a tax deed must be strictly followed." *Paul v. Los Angeles County Flood Control Dist.,* (1974) 37 Cal.App.3d 265, 275, 112 Cal.Rptr. 274.

CONCLUSION

For the reasons set forth above, Petitioner respectfully requests that the Petition For Writ of Certiorari be granted, which would yield significant pronouncements on the disparity and conflicts between the interpretations of the *California Revenue and Taxation Code sections,* because when

applied, violate the Fifth and Fourteenth Amendments to the United States Constitution by taking property without due process of law.

Respectfully submitted,

Dated: November 7, 2008

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APPENDIX

WEST'S ANNOTATED CALIFORNIA REVENUE AND TAXATION CODE

Division 1. Property Taxation
Part 6. Tax Sales
Chapter 7. Sale to Private Parties After Deed to State

§ 3691. Power to sell; sale of part of parcel; tax-defaulted parcels; definitions; notice of intended sale; nuisance abatement liens

(a)(1)(A) Five years or more, or three years or more in the case of nonresidential commercial property, after the property has become tax defaulted, the tax collector shall have the power to sell and shall attempt to sell in accordance with Section 3692 all or any portion of tax-defaulted property that has not been redeemed, without regard to the boundaries of the parcels, as provided in this chapter, unless by other provisions of law the property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to, or interest in, the property, may purchase at the sale. In the case of tax-defaulted property that has been damaged by a disaster in an area declared to be a disaster area by local, state, or federal officials and whose damage has not been substantially repaired, the five-year period set forth in this subdivision shall be tolled until five years have elapsed from the date the damage to the property was incurred.

(B) A county may elect, by an ordinance or resolution adopted by a majority vote of its entire governing body, to have the five-year time period described in subparagraph (A) apply to tax-defaulted nonresidential commercial property.

(C) For purposes of this subdivision, "nonresidential commercial property" means all property except the following:

(i) A constructed single-family or multifamily unit that is intended to be used primarily as a permanent residence, is used primarily as a permanent residence, or that is zoned as a residence, and the land on which that unit is constructed.

(ii) Real property that is used and zoned for producing commercial agricultural commodities.

(2) When a part of a tax-defaulted parcel is sold, the balance continues subject to redemption and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2 (commencing with Section 4131) of Part 7.

(3) The tax collector shall provide notice of an intended sale under this subdivision in the manner prescribed by Sections 3704 and 3704.5 and any other applicable statute. If the intended sale is of nonresidential commercial property that has been tax-defaulted for fewer than five years, all of the following apply:

(A) On or before the notice date, the tax collector shall also mail, in the manner specified in paragraph (1) of subdivision (c) of Section 2924b of the Civil Code, notice containing any information contained in the publication required under Sections 3704 and 3704.5 to, as applicable, all of the following:

(i) The parties specified in paragraph (2) of subdivision (c) of Section 2924b of the Civil Code.

(ii) Each taxing agency specified in paragraph (3) of subdivision (c) of Section 2924b of the Civil Code.

(iii) Any beneficiary of a deed of trust or a mortgagee of any mortgage recorded against the nonresidential commercial property, and any assignee or vendee of these beneficiaries or mortgagees.

(B) For purposes of this paragraph:

(i) "Notice date" means a date not less than 45 days nor more than 120 days before an intended sale or not less than 45 days nor more than 120 days before the date upon which the property may be sold.

(ii) "Recording date of the notice of default" as used in subdivision (c) of Section 2924b of the Civil Code means a date that is 30 days before the notice date.

(iii) "Deed of trust or mortgage being foreclosed" as used in subdivision (c) of Section 2924b

of the Civil Code means the defaulted tax lien.

(b)(1)(A) Three years or more after the property has become tax defaulted and a request has been made by a city, county, city and county, or nonprofit organization pursuant to Section 3692.4, or a request has been made by a person or entity that has recorded a nuisance abatement lien on that property, to offer that property at the next scheduled tax sale, the tax collector shall have the power to sell and may sell all or any portion of tax-defaulted property that has not been redeemed, without regard to the boundaries of parcels, as provided in this chapter at the next scheduled tax sale, unless by other provisions of law the property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to, or interest in, the property, may purchase at the sale.

(B) When a part of a tax-defaulted parcel is sold, the balance continues subject to redemption and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2 (commencing with Section 4131) of Part 7.

(2) Before the tax collector sells vacant residential developed property pursuant to this subdivision, actual notice, by certified mail, shall be provided to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.

(3) Before the tax collector sells vacant residential developed property pursuant to this subdivision, notice of the sale shall be given in the manner specified by Section 3704.7.

(c) The amendments made to this section by the act [FN1] adding this subdivision apply to property that becomes tax defaulted on or after January 1, 2005.

[FN1]Stats.2004, c. 944 (A.B.2144).

§ 3691.1. Notice of parcel becoming subject to power of sale; acknowledgment

The tax collector shall execute a notice whenever a parcel becomes subject to the power of sale set forth in Section 3691 on a form prescribed by the Controller. The county clerk shall take acknowledgment of the notice without charge.

§ 3691.4. Recording of notice; no charge

The notice shall be recorded with the county recorder. After recordation, the notice shall be forwarded to the tax collector. The recorder shall make no charge for the recording.

§ 3711. Deed; conclusive evidence, exception

Except as against actual fraud, the deed duly acknowledged or proved is conclusive evidence of the regularity of all proceedings from the assessment of the assessor to the execution of the deed, both inclusive.

Division 1. Property Taxation
Part 7. Redemption
Chapter 1. Redemption Generally

§4105.2. Certificates; contents

When tax-defaulted property is redeemed and upon the request of the redemptioner, the tax collector shall issue a certificate of redemption. With the approval of the Controller as to form, each certificate of redemption shall show:

(a) The year of default.

(b) A description of the property.

(c) The amounts to be paid.

(d) The name of the person making the payment.

(e) The date of redemption.

Notwithstanding any other provisions of this code, where no physical document of the extended redemption certificate is prepared, all entries

required to be made on the extended certificate shall be so stored that it can be made readily available to the public in an understandable form.

Division 1. Property Taxation
Part 7. Redemption (Refs & Annos)
Chapter 1. Redemption Generally (Refs & Annos)

§ 4112. Collection of fees; effect of redemption; execution and recording of rescission of notice

(a) When tax-defaulted property subject to the notice recorded under Section 3691.4 is redeemed, the tax collector shall collect all of the following, in addition to the amount required to redeem:

(1) A fee of thirty-five dollars ($35) that shall be distributed to the county general fund to reimburse the county for its cost of obtaining the names and last known mailing addresses of, and for mailing notices required by Section 3701 to, parties of interest as defined by Section 4675.

(2) A fee in the amount required by Section 27361.3 of the Government Code that shall be distributed to the county recorder for the cost of recordation of a rescission of the notice, as required by subdivision (c).

(3) A fee of one hundred fifty dollars ($150) if redemption is within 90 days of the proposed date for the tax sale of the redeemed property. In the case of

unsold tax sale properties remaining on the abstract after the tax sale, the fee shall become a part of the redemption amount and collectible whenever the property is redeemed. The fee shall be distributed to the county general fund to reimburse the county for costs incurred by the county in preparing to conduct that sale.

(4) The amount described in subdivision (c) of Section 3704.7 to reimburse the county for the cost of a personal contact required by that section.

(b) Notwithstanding subdivision (a), if the tax-defaulted property is redeemed prior to the proposed sale, but after the county has incurred notice or publication costs pursuant to Section 3702 in connection with a notice of intended sale, a fee in an amount reasonably necessary to reimburse the tax collector for those costs may be collected.

(c) When tax-defaulted property subject to the notice recorded under Section 3691.4 is redeemed, the notice becomes null and void and the tax collector shall execute and record with the county recorder a rescission of the notice in the form prescribed by the Controller. The rescission shall be acknowledged by the county clerk, without charge.

(d) Any fee imposed under paragraph (1) of subdivision (a) or subdivision (b) shall be subject to the requirements of Section 54986 of the Government Code.